



# humjinsi

A Resource Book  
on  
Lesbian, Gay & Bisexual  
Rights in India

Edited and Compiled by Bina Fernandez  
India Centre for Human Rights and Law

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# INTRODUCTION

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**H***umjinsi* - an Urdu word meaning “the being of the same nature or genus, or species or class”. It is also used to indicate “relationship”. More specifically, the contemporary Urdu usage is for “relationships between people of the same sex” - that is, for homosexuals. The word is gender neutral, non-pejorative - and quite significantly, does not constrict the definition of the relationship to the sexual. Visibilising the identity of those who choose partners of the same-sex requires re-discovering and sometimes even inventing words. Most of the words that exist in Indian languages for men and women who identify as homosexual are usually either pejorative or imprecise. Homosexual *behaviour* has been described and documented in various forms through the ages: ancient temple carvings depicting same-sex love and the Kama Sutra are perhaps the earliest documentation of same-sex love in our culture. At different times in the Indian sub-continent homosexuality has been accepted as a sexual practice - though generally not as an *identity*. There have been other periods of history when same-sex love has been the subject of derision and condemnation. Denial of the reality of same-sex love in India was codified in Section 377 of the Indian Penal Code during British rule - a colonial hangover we have yet to get over. Despite over a century of Section 377 however, homosexual behaviour is tacitly accepted in many Indian cultures. This phenomenon is possibly a result of our overwhelmingly homosocial cultures. It is the shift from same-sex *behaviour* to a politicised lesbian or gay *identity* that has occasionally provoked negative and even hostile reactions.

It is only since the early 1980s that homosexuality has become a visible “identity issue” in India. Never before has the issue of same-sex love been debated or discussed with as much passion as in the last decade. An *identity* is being claimed, even as it is being forged. Language defines existence, and it has become necessary to re-discover, re-invent, or create new words to describe this identity, this lived reality. “Khush” (a translation of “gay”) and “Shamakami” (one who desires one’s equal ) are words that are increasingly also gaining acceptance in the struggle of gays, lesbians and bisexuals for visibility.

*Less than Gay - A Citizens Report on the Status of Homosexuality in India* published in 1991 by AIDS Bhedbhav Virodhi Andolan could be considered a “milestone of visibility” for its comprehensive coverage of various aspects of the issue. Since its publication, the decade of the nineties has been one of tremendous organising efforts. Lesbians and gay men have formed groups, brought out journals and newsletters, held conferences and workshops. The mainstream media coverage too, has been largely positive - with press features, interviews, cover stories, talk shows and recently, films with lesbian, gay and transgender themes.

This resource book represents a confluence of the efforts of various groups and individuals - with a focus on the different aspects of lesbian, gay and bisexual people’s legal rights. It was conceived of at a workshop on “*Strategies for furthering lesbian, gay, bisexual rights in India*”, held in Mumbai, 7-9 November 1997. This workshop was co-organised by three Mumbai-based organisations - *Stree Sangam* (a lesbian and bisexual women’s group), *Human Rights Law Network*, and *Forum Against Oppression of Women* (a women’s group); and *Counsel Club* (a Calcutta based support forum for gay, lesbian and bisexual people). For the first time, a human rights organisation and a women’s group co-organised a workshop with lesbian, gay, bisexual groups. This workshop was the outcome of an earlier one. In June 1996, a presentation on *Lesbian and Gay Rights in India* was made by the *Working Group* of lesbian and bisexual women at a workshop on “Gender Just Laws” held in Bombay. 200 lawyers, human rights activists, women’s groups, and the press attended the workshop. The issue of legal rights for lesbians and gays - i.e., decriminalisation, anti-discrimination legislation, and domestic partnership benefits - was seriously discussed, particularly in the context of gender justice.

Advocating a legal rights strategy is but one more means of “visibilising” lesbians and gays, given that Indian law penalises and therefore partially invisibilises the realities of lesbians and gay men. Choosing a human rights platform is also a means of focussing public attention on the violations of gay and lesbian civil and political rights. Certainly we do not necessarily believe (though we can always hope) that changes in legislation will firstly, occur in the immediate future; or secondly, lead to an immediate change in social attitudes towards those men and women who choose partners of the same sex. In today’s climate of religious fundamentalism, censorship, and re-inforcement of repressive gender and sexuality stereotypes, such changes seem unlikely. The fundamentalist frenzy generated over the screening of the film *Fire* even as this book was going to press is a chilling reminder of this. In this context then, we believe that any efforts (legal or otherwise) to create spaces for social acceptance of same-sex relationships become vital.

Broadening the scope of a simple “workshop report”, the idea behind this resource book was firstly, to provide information and resources on lesbian, gay & bisexual legal rights in



both the Indian and international contexts. Second, the attempt has been to document the gay, lesbian and bisexual movement in India - to provide continuity to the process of such documentation and to understand the many efforts going on all over India, as well as the South Asian Diaspora. So, we have compiled a dateline of events in the movement; as well as listings of the films, newspaper clippings, theatre and dance performances which address lesbian, gay and bisexual issues in India.

The legal rights discourse in this book focuses on three major areas - decriminalisation, anti-discrimination and domestic partnership rights. The arena of lesbian and gay rights is, of course, much larger - including issues such as child custody and adoption, asylum and immigration rights, rights to protection from hate crimes and violence, the rights of lesbians and gay men living with HIV / AIDS, and the rights of transgender people. In compiling this resource book, we recognise that we have been unable to address these issues - not because we believe they are unrelated or unimportant, but because they are complex issues, requiring further research. It is our hope that future efforts at organising and documentation will incorporate these areas.

*Counsel Club, Calcutta*

*Forum against Oppression of Women, Mumbai*

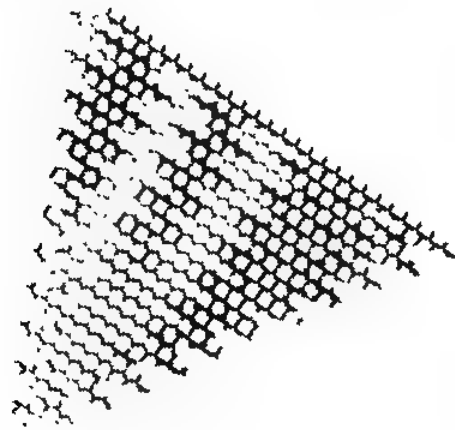
*India Centre for Human Rights & Law, Mumbai*

*Stree Sangam, Mumbai*





# Legal Rights of Lesbians, Gays and Bisexuals



- ⌘ An Overview
- ⌘ Decriminalisation
- ⌘ Anti Discrimination
- ⌘ Domestic Partnerships



# LESBIAN, GAY & BISEXUAL RIGHTS IN INDIA

## An Overview

80X83

*Circulated as a background paper for the workshop "Strategies to Advance Lesbian and Gay Rights", 7-9 November 1997, Mumbai, and based on a presentation made by the Working Group for Lesbian and Gay Rights at the conference on "Gender Just Laws" 30 May - 2 June, 1996. Members of the Working Group on Lesbian and Gay Rights included Swatiya Manorama, Shalini, Gomathy, Chayanka, and Bina Fernandez.*

When we have organised around lesbian and gay issues in different fora, we have been repeatedly asked why we consider these issues important in the face of other more urgent issues. Again, every time we have tried to ask for legal recognition of lesbian and gay relationships we have been questioned as to why we want to legalise and hence institutionalise a private matter

Our answers have been simple. We find these issues urgent because we are talking about the lived realities of a number of people, we are talking of our lives, we are talking of our existence invisibilised by society, we are talking publicly and openly of our collective pain inflicted by a society whose norms repeatedly violate our very basic human rights. And we wish to legalise our relationships because this is one way of gaining recognition and visibility in society.

We welcome this opportunity to share our concerns about these issues with you in this paper. Positioning ourselves at the intersection of the Feminist and Human Rights perspectives, we would like to draw your attention to the reality of our lives, to an existence of silence, fear, real danger, discrimination and harassment by various forces. In doing so, we hope to initiate a dialogue with you on these issues so that women who love women, and men who love men, are included in the discourse on women's rights, human rights - justice.

The Human Rights discourse that maintains every individual's right to live freely provides a framework for individuals to choose and live a lifestyle that is centred around same sex relationships. Thus, decriminalisation of homosexuality, right to protection from human

rights abuses/ hate crimes and non-discrimination on the basis of sexual orientation *should* be on the agenda of any human rights organisation.

However, it was only in 1994, that an international human rights organisation - ***Amnesty International*** finally publicly acknowledged that violence and abuse of lesbians and gay men because of their sexual orientation constituted an infringement of human rights

Another ground-breaking verdict was issued by the United Nations Human Rights Committee in the case of *Nicholas Toonen vs. the State of Australia* in which the Committee acknowledged that the criminalisation of homosexuality in the State of Tasmania, Australia was a violation of Articles 2 and 26 (right to privacy and right to equal protection under the law) of the International Covenant on Civil and Political Rights.

A decade of lesbian and gay activism and lobbying in the US and Europe has resulted in a few gains in terms of putting lesbian and gay rights on the human rights agenda. Human rights groups in India have not yet raised the issues of lesbian and gay rights in spite of the stark criminalisation faced by gay men and lesbian women. The only initiative undertaken was the conference on *Gender Just Laws* organised by women's groups and human rights groups in 1996 where lesbian and gay rights were discussed openly on a broad platform with people from various backgrounds

Lesbians and bisexuals, like other sexual minorities (transgenders, hijras, prostitutes) challenge the norms of traditional families that are constructed on the premises of heterosexuality, patriarchy, monogamy, and control of women's sexuality. Inherent in this challenge, is the recognition of other kinds of families - single parent families, same-sex domestic partnerships, multiple adult related (and not just sexually) families, etc

At one level, the accepted norm of the family needs to be questioned at its very roots. Simultaneously, the law should endeavour to broaden the legal definition of "family". We believe that the definition of the family must be looked at again and not just through the lens of hetero patriarchy but also through various lenses that reflect lived realities

The family is not a static institution as it appears to be, or as people discuss it. The overall function of the family is in essence the same in various societies - i.e., provision of legal heirs. In a majority of communities where social, caste and gender discrimination and hierarchical status exists, heterosexuality is the norm, and reproduction is the main function of the family. Another essential function of the family is to maintain and reproduce cultural and social values and carry them forward through generations.

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<sup>1</sup> United Nations. *Report of the Human Rights Committee* vol. General Assembly Official Records, Communication No 488/1992, 9th Session, Supplement No 40 (A/49/40). New York: 1994. Pp 226-237

Violence against the powerless within the heterosexual, patriarchal family is an important "hidden" norm that has social sanction. This is because family is considered to be a sacred institution, which should be maintained "at all costs" - even that of violence. Other forms and structures based on trust and faith, and without defined hierarchies in the relationships between members do not have legal and social sanction because they affect and violate the norms and values that are perpetuated by the heterosexual family structure of patriarchy.

We believe that lesbianism by its very existence raises issues that the women's movements is concerned with, and therefore feel it is important to create and articulate a space for lesbian rights within the context of the women's movements.

Within the women's movements in India, lesbian issues have been raised occasionally over the past decade. The range of responses has varied from hostility and dismissal to cautious acknowledgement. Rarely has acknowledgement led to action. We do recognise that an important reason for the lack of dialogue and action within the women's movement on this issue has been the lack of visibility of lesbian women in the movement with the exception of a few brave women - for whom there has been little or no support. This has then led to a vicious spiral where on the one hand, lesbian women do not "come out" because of lack of support or resources. On the other hand, because there are very few women who do "come out" their energies are expended in survival, leaving very little left for activism/ mobilisation or organisation within the movement.

Since it is not possible - within the scope of this paper - to discuss all the issues raised above in as great detail as we would have liked, we have focussed on the *legal rights of lesbians and gay men* and hope that our readers may find insights on other issues woven through the text.

To begin with, some excerpts from a letter that was received by the TV programme *Shakti* after it aired an episode on lesbians and gay men:

*We met nearly 10 years ago. She was working as our acting hostel warden while I was training as a paramedic in a medical college hospital in Delhi... I was about 10 years her junior... I developed a liking for her and we eventually became very good friends. At her suggestion, I started to cook meals for both of us in her room. This ensured us privacy that we badly wanted... She expected me to do all the household work... that I keep things ready for her... I readily complied because we developed mutual love. She would always boss around as men do in our society... We had developed physical intimacy ... She was very possessive of me.*

*After I graduated and started looking for a job, we decided to get married since we could not live apart any longer. But would our family members, friends, and co workers accept our decision? Would our*

*relationship get social and legal sanction? We were riddled with doubts, and I lacked the confidence and courage to take such a step. Yet we felt that we should declare to each other that we were married. One evening we went to a mandir and got the blessings of the deity. When we returned to the hostel she applied 'sindoor' to my 'mang'. It was the happiest day for us. We never informed anyone of our mutual pact.*

*Things went on well for a year. I got a job and became economically independent. One day on my return from work, I found her in a compromising position with a young girl in her room ... From then on our relationship soured. I felt cheated, I even attempted suicide. I left my job to work in another set up...*

*Every year there are at least 3-4 lesbians who can be counted in the batch of freshers at my alma mater. I have suffered a great deal but still have no answers to some crucial questions. **Why can't two girls get married? Why does society not recognise, support and sanction lesbian relationships? A heterosexual relationship may also sour like ours did. But there at least society is aware of marriage and break ups. In our case the most traumatic thing is that the world is neither aware of our 'marriage' or of its end.** [our emphasis] I had to face the pain more or less by myself. Many other women like me may have attempted suicide and even succumbed to such attempts. How many more must undergo this trauma silently? And why?"*

Existing personal laws in India – whether religious or secular – define and regulate the legal space surrounding intimate social, and personal interactions. These cover regulations pertaining to marriage, divorce, inheritance, adoption and other such rights connected to the family – both natal and marital. Inevitably, the laws assume the norms of patrilineal and patrilocal, heterosexual society and within none of these is there any explicit or implicit mention of rights for the lesbian and gay people of the country.

Yet, lesbian and gay existence in India is (and has been) an undeniable reality. We come from different backgrounds, different parts of the country, speak different languages and live different kinds of lives. Many of us want to share our lives with another person of the same sex as ours. And we assert that this desire and reality is no less important than the heterosexual one.

However, in asserting the rights of lesbians and gay men to marriage/civil contract unions /domestic partnerships we presume as a prerequisite the decriminalisation of homosexuality and the protection of lesbians and gay men from human rights abuses and discrimination. So this paper on lesbian and gay rights has the following four sections:

1. Decriminalisation of homosexuality
2. Protection of lesbians, gay men and other sexual minorities from human rights abuses.
3. Anti discrimination on the basis of sexual orientation.
4. Domestic partnerships for lesbians and gays



toleration of all kinds of individual behaviour. Such would be the case if we believed that homosexuality is unnatural but is to be tolerated as an individual freedom. This is possibly the position of some of the human rights organisations throughout the country. We do not believe that there is anything deviant or unnatural about being homosexual but it is as much 'straight' as heterosexuality. It is in this context that we talk not of liberties and concessions to homosexuals, but of rights of homosexuals.

Our organisation's link with the gay, lesbian, and bisexual rights movement is fairly recent, and started with co-organisation of the Gender Just Laws workshop held in Bombay in 1996 that had a separate session on gay, lesbian, and bisexual rights. The individuals who started our organisation in 1989 have always been sympathetic to the movement, partly because of the left tradition they come from, and partly because of old associations and friendship with gay men and lesbians. In India, however, the human rights' movement as a whole has failed to address the question of gay men and lesbians in any significant or serious way. We attribute it to four reasons:

Many of the human rights groups have historical linkages with traditional left and Maoist parties. Some of them are direct fronts of these parties while others, even though not organisationally linked, still have leading individuals who are members of these parties or are strongly influenced by their ideology. They consider a discussion of sexuality to be more particular even heterosexuality—as a frivolous, petit bourgeois deviation. They, like their parent organisations, view homosexuality as a capitalist aberration, arising out of imperialistic influence.

Those human right groups that do not come from these backgrounds still tacitly accept the sexual mores of the liberal tradition that condemns homosexuality as unnatural and deviant.

Some of the human rights organisations have stopped openly condemning homosexuality; but even their toleration of homosexuality is based on a patronising attitude of looking at gay men and lesbians as frustrated individuals who have undergone a traumatic childhood. Besides, they have no idea of the extent of prevalence of homosexuality and believe that it is either something that happens in urban high class societies or within the four walls of Tihar jail.

Lastly, human rights organisations of all kinds are influenced by the movements around them. It was only the pressure of the women's movement that has forced human rights organisations to now take up women's issues. Similar is the case with environmental issues, etc. In the absence of at least a somewhat strong gay, lesbian, and bisexual movement it is difficult to imagine human rights organisations giving the issue any notable prominence.

The Indian State—as is the case in most countries—deals with homosexuality in two ways. At a sexual level it makes homosexuality a crime and a punishable offence. At the level of companionship, it sweeps these relationships under the carpet and completely ignores the existence of any companionship not dependent on heterosexuality (and even within heterosexual relationships confined only to marital relationships), thereby denying crucial rights to homosexual couples. It therefore becomes necessary to battle at both the levels with a two-fold approach:

- (I) By decriminalising homosexuality; and
- (II) By getting legal status for homosexual relationships that is otherwise granted only to heterosexual relationships.



## A Self-Help Story

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*Counsel Club, Calcutta*

**C**ounsel Club is a support forum for gay people, by all people. Started in August 1993, it aims to reach out and connect with all those interested in dealing with the issue of homosexuality, either at a personal level or at the social level. The sky is the limit in our struggle to fight the prejudices and discrimination faced by gay people (lesbians, gay men and bisexuals)

Calcutta—the city of teeming millions, of Howrah bridge, of tram cars from a Jurassic age—has always been home to some underground movement or the other: the Independence movement, the Naxalite movement and even the Metro Railway! And since the last six to seven years, the gay movement as well. This is one movement that is already showing signs of coming above ground

Before we describe Counsel Club's experience, let us take a look at what was happening in Calcutta and Bengal before Counsel Club came to be. Quite a lot was, by the standard of those days. Bengali literature had not shied away from dealing with homosexuality Bankim Chandra Chattopadhyay, Sarat Chandra Chattopadhyay and Sunil Gangopadhyay among others had all dealt with the subject in a direct or not-so direct manner in their writings. The trend (if one can call it so) seems to be continuing.

In the 60s and 70s, Calcutta had a thriving social network of gay people, as recounted by some contemporaries and even written about by writers such as Allen Ginsberg. Then again, gay action in the modern sense of the term, emerged in Calcutta possibly sooner than in any other place in India. In 1990, "Shakti Khabar" published from London by SHAKTI—reported having in its collection a few issues of "Gay Scene", a journal brought out by some individuals in Calcutta in the late 70s/ early 80s. The journal did not last long, and unfortunately nothing is known about the whereabouts of those individuals.

Much later, in the late 80s and early 90s, attempts were made at organising gay people, albeit for creating a social set-up, rather than political action. One of these, Fun Club (December 1990- December 1992), was reasonably successful in attracting the attention of Calcutta's gay network, but closed down because of financial and other reasons before it could really venture into areas other than providing space for socialising and "fun"

The closure of Fun Club, however, spawned the birth of a gay journal "Pravartak". A couple of members of Fun Club felt some gay action or the other should continue from Calcutta, and so started "Pravartak". The typed, photocopied and stapled journal lasted all of three issues from December 1991 to March 1992. One should say that the journal went off into "hibernation" rather than a "close down", for it had sown the seeds for further action. Sure enough, it was revived in August 1993, this time as the house journal of Counsel Club. The five member team that started Counsel Club decided to make it a "friendship group". This soon started to grow as a support group, with "Pravartak" as its chief activity initially. A conscious decision was also taken to involve gay positive, non-gay people, since the idea was to network as widely as possible and so promote a greater understanding of the situation faced by gay people. As a support group, Counsel Club has now evolved into a form of "shelter" for gay people. As the logo shows, it is a forum where a gay person can express his or her innermost fears and desires in a friendly atmosphere, and where he or she can strengthen himself or herself to face the big bad world of discrimination. Discrimination that is sometimes "silent" and "invisible", sometimes "violent" and "blatant". Discrimination experienced many times at home or within the extended family; and sometimes within the friends' circle or even at the workplace.

Counsel Club's philosophy. All roses are roses, but all roses are not red. That is, all humans are humans, but they are all diverse in so many ways—sexual orientation being one of them. This diversity need not make any section of humanity marginalised. All humans have an equal space under the sun, and should assert their right to the same. The same holds for gay people. First they must overcome their fears and gain self esteem. The bottom line clearly is self-acceptance. Then they can demand (not beg) acceptance from larger society as well. Success may or may not come, but at least the sense of self worth that comes from self-acceptance will remain intact! Towards this goal of self-acceptance, Counsel Club's prime task has been to bring people out of their isolation. To help them clear the cobwebs in their minds about their sexual selves. To show them there's much more to being gay than cruising in parks and hurried sex in public urinals.

"Pravartak", as mentioned earlier has been the main vehicle for Counsel Club's agenda. In its new typeset, printed and bound avatar, it sold many more copies, though seriously limited by the lack of finance, distribution outlets and a non registered status. (Both Counsel Club and "Pravartak" are non registered entities till date, though registering the group under the Societies Act is an immediate plan). On the positive side, the success achieved in distributing the journal through private circulation is something to celebrate. It means that the gay network really works!

When there was a general demand from the readers that the journal be made less cumbersome to carry and put away from prying eyes, its size was reduced to the present format. A profile of the issues covered in "Pravartak": Reports (of conferences like this

one), First Person stories, Nos Amis, Comics on gay issues, Counselling Help, etc. Apart from fiction, Poetry and Reviews, a very popular section of the journal is the Networking (pen pals) column. There is reason for the journal to be proud of this column, for it has helped start at least a few gay relationships! One of the gay couples was later interviewed by "Pravartak" for the sixth issue.

Safer sex and sexual health are also covered as this is an important area where gay people need to educate themselves. The state machinery is still largely asleep to the risks involved in same sex behaviour vis-à-vis STDs / HIV / AIDS: this shows through in its communication on HIV / AIDS awareness. These issues are dealt with outside the pages of "Pravartak" as well—through condom promotion and group discussions among the group's members and friends—though not so regularly yet. However, Counsel Club members have quite regularly participated in the workshops organised by the West Bengal Sexual Health Project since its inception in May 1994. The project, funded by the Department for International Development of the U.K. is one instance where a government body seems to have (tacitly?) acknowledged the existence of gay people and same sex behaviour in Indian society. The training provided by the project's workshops has of course been extremely valuable.

"Pravartak" is always on the look out for references to homosexuality in Bengali literature and has published extracts from quite a few such writings. Notable among them are extracts from Bankim Chandra's "Indira" and Sunil Ganopadhyay's "Sei Samay"

It has been quite an experience publishing eight issues of "Pravartak" (11 if you count the three issues of the first avatar). The group members had to fight their inhibitions before any work could be done. Fortunately the typesetters and printers (Netware Computer Services, Exact Reprographics and Reliable Screen Printers) were only too eager to discuss the issue themselves!

In March 1995, "Pravartak" had a lucky break when Classic Books (a favourite among Calcuttans fond of alternative books) offered to stock a few copies of the journal. Thanks to this, the group and the journal could reach out to a large number of people. Later People Tree in New Delhi also became an outlet for "Pravartak".

Apart from publishing "Pravartak", networking with other gay groups and individuals and NGOs has been an important activity for Counsel Club right from the start. This has yielded a network of Counsel Club's members and friends India-wide and world wide.

The group members have also spoken to the print media a number of times. Both the local and national publications (including Bengali newspapers) have interviewed Counsel Club members. The group has also "come out" on BBC and Doordarshan. Besides, its

members have participated in discussions on homosexuality and AIDS awareness on All India Radio, Calcutta. Of course all this media coverage has resulted in both positive and negative reactions. Interestingly, most of the negative reactions resulted from coverage in the Bengali press. In fact, a front page anchor report in "Ananda Bazar Patrika" resulted in some very acrimonious letters from the newspaper's readers. One of these letters was instrumental in the prefix "Naya" being added to "Pravartak" from the fifth issue onwards (Refer to: "So much has happened..." Naya Pravartak issue #5, May December 1995, Pg. 6, 13)

On the positive side, the media coverage has helped several isolated gay people to discover that an organisation such as Counsel Club exists, and that too in eastern India

The group's postal address was published twice in "The Statesman", Calcutta. Each time there was a wave of letters requesting information about the group. The writers were from all age groups, but male writers heavily outnumbered the female ones. Many of them were looking for friends and even romantic partners. Others were brutally frank about being interested only in the phone numbers and addresses of prospective sexual partners! The most touching letters came from those who were not clear about their sexual orientation, who felt something was "wrong" with them and who asked questions such as "Is same sex attraction normal?" Some of them even expressed problems such as lack of concentration and confidence at work or studies because they could not help worrying about their "abnormal attraction" or because they were always worried about "being found out". Many of these "problem writers" were married men. In direct contrast to such letters were those that came from people well adjusted with themselves, but still largely isolated. Most of them gave detailed accounts about their lives and family situations, the experiences that arose from self-realisation, falling in love, sexual encounters, broken or successful relationships, etc. The dozen odd files of letters Counsel Club has, all point at one thing. There are countless people out there, submerged in the masses, yearning to express their feelings about their sexual attraction freely without guilt or fear. Thus correspondence and "friendly counselling" over letters takes up much the group's time

Another regular activity of the group is the first Sunday monthly meeting. These meetings have been a major success, and have been held without a break since September 1994. Till the middle of this year, these meetings were usually held at Counsel Club chairman Hem Chandra Huiyil's place (his living room, to be precise). Sadly the group had to give up this "heritage venue" when Hem's landlord objected to "anti social activities" going on under his roof! Now the venue alternates between another member's place and a hired hall. The agenda for the first Sunday meetings consists of discussions, taking stock of the past month's happenings and planning for the coming month. At one time, the agenda also consisted of general gup shup, playing games such as anatakshari and even quizzing

The attendance at the meetings grew (from barely a dozen or so for the first one year to around 20 during 1995-6 and to more than 30 mid 1996 onwards). This meant that both the space and the time available for the meetings started proving inadequate to accommodate such a wide agenda as well as the diverse interests of the people attending the meetings. Thus in September 1996 it was decided to split the monthly meetings into workers' meetings (which would continue on the first Sundays) and social meetings (which would happen on any of the following Saturdays or Sundays). This formula has worked quite well so far, in spite of the irregularity of the social meetings.

Another favourite spot for many of the group's smaller meetings and discussions has been an eatery on Middleton Street in central Calcutta, on the same premises as Classic Books. Many of the meetings with newcomers to the group have also been held here. Counsel Club's birthday parties are becoming increasingly popular if the fun and camaraderie at the third and fourth birthday parties is any yardstick.

"Friendly counselling" through letters was mentioned earlier as an important activity of the group. Perhaps more significant is the "friendly counselling" the group's peer members have been providing in person—to both newcomers as well as those who are already members of the group. Such counselling on a number of occasions has been followed by a referral to the professional counsellors or lawyers who work with Counsel Club. Normally, a referral is made when the problem concerned needs expert handling such as testing and treatment of STDs, advice regarding HIV testing, or when accurate legal advice is needed. Counselling through yet another medium—over phone—has also become part of the group's agenda. This happened only recently (May - June this year) and is based on a collaboration worked out with Lifeline Foundation, one of the few help lines Calcutta has.

Among the other activities of the group are its archival services. These have grown over the last four years to include books, journals, reports, research papers, brochures, video cassettes, the audio cassettes and transcripts of Counsel Club's oral history project (which is yet to take off properly).

One of the most recent services started by the group is its Employment Scheme. The idea behind the service is to help the group's members move towards financial independence and thereby gain greater control over their lives. In the group's experience, many gay people would like to be open and assertive about their sexual orientation to their families only when they have become financially secure. This scheme was started in January 1997 and has had moderate success so far. It helps locate openings for jobs, if possible within the gay network. "Jobs available" ads have made an appearance in "Pravartak". The scheme also assists group members in starting venture projects such as making greeting cards, other stationery, painted T-shirts, etc. Assistance may be financial (in a limited way) or in the form of marketing the product through Counsel Club's network. A major feature of the scheme has been the setting up of a salary pool through donations from some of

the group's members. The money in the pool is used to pay a nominal monthly salary to the group's first paid worker who is supposed to look after the administrative and development work of the group. The worker has the right to delegate work to other members. He or she must be a member of the group.

January 1997 also saw the group have its first Network East conference. The aim was to bring together the group's members and friends living in eastern India, and strengthen the gay network in that part of the country. The meeting was quite a success, and there is every chance that it will become an annual feature. The conference, planned carefully over a period of nearly a year, included group discussions, a sexual health workshop and role playing sessions among other things. Nineteen people participated from West Bengal, Assam, Bihar, Orissa and Andhra Pradesh. A few copies of the Network East report are available with the group.

The group has had experiences on the cultural front as well. In June 1996, three of its members organised a ballet in collaboration with Sapphire Creation Dance Workshop (a Calcutta based modern dance troupe). The ballet, titled "The Alien Flower" was based on poems written by a group member. The poems talked about the experiences of a gay person as he passes through the different phases of life.

Though the group has not had very many direct confrontations with the law, this issue merits a separate discussion. What can be mentioned here is that some of the group's members have had personal experience of being harassed by the police in the parks of Calcutta. They also know of several other cases where friends were threatened by the keepers of the law to pay a fine (a minimum of Rs 51) or spend a night in lock up. In many of these cases, the person so threatened had not done anything to attract the provisions of any of the public nuisance laws, or even Section 377, India Penal Code. Occasionally, the police and the guards are reported to resort to even violence and sexual abuse of their "victims". It is not uncommon for the "victim" to be asked to provide "sexual satisfaction" if he is not able to pay cash.

Counsel Club has roughly mapped the sexual network of Calcutta and Howrah. Many of these cruising sites are also operating grounds for men who sell sex. Most of them are reputed to have "contracts" with the police whereby they are "allowed" to indulge in activities such as snatching valuables and money from their customers. In return, they must provide *bafta* of the sexual kind. If somebody were to file a report against them for theft, it would not be a surprise for the police to stonewall the complainant instead!

The group has very recently had problems with the Customs Department as well. A consignment of copies of *Trikone* magazine was confiscated by the Customs department on grounds that it attracted the provisions of the Customs Act, 1962. (Counsel Club was



one of the distributors of the magazine in India, the other being The Humsafar Trust in Bombay.) While the commercial violations cited by the department in confiscating the parcel may be tenable, its allegations that literature dealing with lesbian, gay and bisexual issues is “derogatory to the morality and social system of our nation” is definitely debatable.

To end with, it would be pertinent to say that though Counsel Club has had some success in its work, it has a long way to go. Its membership has risen from 5 at the start to more than 100 today — not just in Calcutta, but all over India and even abroad. So has the number and variety of issues it has had to deal with. Issues which are of universal importance to humankind, and not confined to any one section or the other.



## Another Challenge to Patriarchy

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### *Forum Against Oppression of Women*

**T**he very existence of lesbians is a challenge to patriarchy in society. The primary struggle of women's groups has also been against patriarchy, and within it most dominantly against the power structures within the family. The women's movement is a space for the struggles of all women. Looked at in this way, lesbian rights and lives of lesbian women should have been an important part of the women's movements' agenda. Yet that has not been the case for various reasons. However, in the last few years some attempts have been made in this direction.

As an autonomous women's group that has been, for the past few years, consciously raising the issue of lesbian, gay and bisexual rights, we in FAOW feel it important to share the process we have been through. In the last 17 years of our existence, we have made a journey and arrived at an understanding today. While talking about how we look at the issue today and how we wish to work on it, we would also like to trace the path we have travelled. In the process we might also share some of the journeys of the women's movements.

### **Introduction to Forum**

Forum like many other groups in this phase of the women's movements was formed in 1979 as a response to the Mathura rape case. Initially started as Forum Against Rape, it soon expanded to other areas of violence, as many women with different problems started approaching us for help. Instead of focusing on a single issue, we started taking up other issues like domestic violence, wife murders and sexual harassment. Besides violence against women, we have also been involved in health campaigns, personal laws, and in activities against communalism.

FAOW started as a platform for many women who represented groups from different ideological streams like Socialist, Gandhian, Left, etc. Today we are a group of women who participate on a consistent basis, with a broad based common understanding, although we continue to have differences over our ideologies.

## 1. Decriminalisation of homosexuality

Section 377 of the Indian Penal Code (1860) criminalises homosexual acts (for the text of the section, please refer to page 40). This statute is based on the British law – Offences Against the Person Act (1861) – which was subsequently instituted in all colonised countries, including India and Ireland. The experiences of gay men who have been threatened and violated – physically and emotionally – by this law have only been documented in the last decade. Here are some excerpts from Anuja Gupta's testimony at the International Tribunal on Human Rights Violations Against Sexual Minorities, (October 1995):<sup>2</sup>

*"I would like to begin by reading the testimony of a gay man that was tape recorded earlier this year in New Delhi. This is what he said, 'I was taking a walk with a friend. We were talking when two policemen came, took me aside and asked me to give them my watch and gold chain. I was very scared. My only thought was that they can take whatever they want as long as they leave me alone. If they had taken me to the police station, they would have raped me. They kept repeating that they would beat me and sodomise me. I got really scared and gave them what I had in my pocket: Rs.100 and my watch. Then they asked me to come back with more money.'*

*Though this incident is evidence of arbitrary harassment of gay men by the police, there has also been a well-planned effort by the Delhi police to arrest gay men under a "Clean up the Parks" drive. In July 1992, for almost a week, plainclothes policemen acting as decoys roamed around Central Park, one of the popular cruising spots in the heart of Delhi. They approached gay men – inviting them for a cup of coffee or a walk and other such seemingly harmless offers. When the men accepted, they were arrested and taken to a police vehicle waiting nearby. In total, 18 men were arrested within 3 days.*

*This time the police did not use Section 377, but Sections 92, 93 of the Delhi Police Act for public nuisance. The campaign ended with a press conference hosted by the Delhi police. At the press conference, the police provided to the press the names and work addresses of those arrested.*

*To protest against the campaign the AIDS Bhedbhav Virodhi Andolan (ABVVA) an HIV/AIDS activist group held a demonstration outside the police quarters. This was the first public demonstration in defence of gay rights to be held in India. When the officer in charge was presented with the memorandum, he was unable to hide his amusement at what he felt was a non-issue.*

*.. Though gay men are harassed by police in the parks, they at least have access to public space, something that is completely denied to lesbian women. The silence surrounding lesbians is in itself powerful evidence of the violation of their rights."*

<sup>2</sup> International Gay and Lesbian Human Rights Commission, *The International Tribunal on Human Rights Violations against Sexual Minorities*, (New York: 1995) Pp 15-17

In its organisational functioning, FAOW has consciously taken a decision to remain a non-registered and non funded group functioning with purely voluntary inputs from its members. Our meetings are primarily in members' residences. We meet once a week and divide responsibilities. We believe in, and try to work in, a non-hierarchical, non-institutional method of functioning.

This, of course, has both positive and negative aspects. It affects our ways of functioning, the kind of issues we take up, and the manner in which we take them forward. We are able to raise issues that other groups are unable to do for various reasons. It helps us to remain open to new ideas and allows for space for debates and discussions. The limitation of all this is, that although said to be open, we are mainly a group of urban, middle class, very independent, autonomous women. The openness allows for discussion, but we can have a very limited translation into action. Our reach is limited and any sustained activity is difficult and dependent on individual initiative and interests.

FAOW is primarily a campaign group and has used multi-pronged strategies in its work. Consciousness raising through writing, plays, discussions, meetings has been one important part. Networking and trying to work on common platforms with other women's groups and with progressive groups on different issues has been another strategy.

One of the most used strategies for campaigning has been that of legal reforms. We have tried to use the public space provided by law to women, to raise contentious issues and initiate debates among various sections of our democratic society. We also look at progressive law as a tool in the hands of the few brave women who struggle against all odds for survival and independence.

Through the years the common understanding we have arrived at is that women's oppression is not the result of biology or social customs but is systematically perpetuated by patriarchy both at the material and ideological levels which controls women's labour, sexuality, fertility, and mobility. We further believe that women's oppression can change through collective action and struggles at various levels.

We believe that as women each of us has multiple identities, which affect the way in which we experience the patriarchal structures in society. Hence, we believe that the women's movements must provide autonomous spaces for women from specific groups to organise under the larger umbrella of the women's movement. These spaces are very important for all women to be able to identify the paths and ways in which their specific struggles can move ahead, while also having some shared vision of the society as a whole.

Further, we believe that the women's movements with other people's movements like dalits, tribals, workers, and other minorities can create a society in which there will be

equality between different classes, castes, religious communities and also across gender and sexual orientation

It is with this background that we would like to look at the issue of lesbian, gay, and bisexual rights and our involvement in them since the very beginning

## **Lesbian, gay and bisexual rights**

Although theoretically most women in Forum accepted homosexuality, there was no open dialogue about it within the group or even at a personal level till quite late. In the early years of the women's movement, part of the reason for this was ignorance, part of it was the heritage of the left movement that most of us carried, in which sexuality itself was not talked about openly. A large part was also fear that this could jeopardise the newly emerging acceptance of women's issues and struggles, that the group and the women's movement would be labelled lesbian and hence unacceptable.

It was primarily the persistent effort and struggle by the few lesbian women in the group and the women's movements that led to any kind of change in this position. The changed external environment has also affected the agenda.

In the mid 80s, F.AOW meetings were held in a lesbian household, if that can be taken as a positive assertive action. It was definitely not a conscious choice on our part. It also did not mean that we were willing to recognise the specificity of lesbian lives and their issues as of any importance to the group.

It was the marriage of Leela and Urmila, two police constables from Bhopal in 1987, and their subsequent dismissal from service that forced Forum to take a public stand. We tried to take the matter up with other groups and had many debates within F.AOW. The presence of lesbians within the group and this external event of discrimination created the space within F.AOW for the first time to have intensive internal debates on the issue. Although we could do very little in terms of action at that time, since then, lesbian rights have been on F.AOW's agenda.

In 1989, Forum took up the task of formulating personal laws for women, in the wake of a highly politicised debate around Uniform Civil Code and the atmosphere of communal tensions. It was felt that specifying what is meant by gender just laws for women was one of the ways to distinguish the F.AOW's position from the Hindutva one. It was also felt that within the women's movements we needed to raise the debate about the nature of laws that we find pro-women.

In the process of formulating the laws, within F.AOW there were many debates around the issue of family, the compulsory nature of marriage, alternative families, the control over

women's sexuality, and in general, the nature of women's oppression. Lesbian families and relationships were discussed at great length. We did believe in legal and social recognition to lesbian partners and families. The number of cases that had appeared in the media, since Leela and Urmila's marriage in 1987, of women wanting legal recognition for their relationships, left no doubt in our minds about asking for legal rights.

Yet, in the final draft, we did not spell out clearly that we considered same sex partnerships to be on par with heterosexual partnerships. We felt that we would leave the definition of marriage as a contract between two consenting adults (without saying anything about their gender). Since this is anyway the case with the Special Marriages Act, we thought that some women could probably use it to get their marriages registered. We feared that talking openly might take away this space that women might have to gain recognition for their relationships.

Although we did not specify very clearly, we did raise the issue openly in every discussion on the draft and found the response not very positive. Most women's groups and other groups felt that lesbians have hidden, traditional, "safe" spaces, which we would be sacrificing if we raised the debate on a public platform. Besides this kind of a 'strategic' opposition, many groups also felt that homosexuality was abnormal, that it was an issue that has come with the influences from the West, that there is no need to talk of these issues and sacrifice the rights of all other women and the recognition of their struggles.

Since 1989, Forum has been consciously trying to talk about these issues in as many fora as is possible. The National Conferences of the Women's Movements have been a platform that has been used to debate and discuss this issue with women's groups from the different parts of the country. The presence of more vocal and out lesbians within the group and the movement has helped this process. Besides there has been a change in the external environment. Internationally and nationally there is more importance given to this issue.

With all these influences, FAOW's understanding also evolved. Today we believe that no hidden, invisible space can be a 'safe' space, since by their very nature such spaces repress and silence women's claims to own these spaces. They force women who love women to live an unnamed and unaccepted life, in shame and guilt. We hence believe that there is necessity for open debate and acceptance. Without creating an open environment for this, a backdoor entry in law for two women or men to claim marriage does not mean anything.

It is with this understanding that in 1995 when we reworked on the draft for gender just laws, we openly talked of lesbian and gay rights, families and partnerships. Raising the question of homo-relational reality in the context of demanding an equal law for heterosexual and homosexual persons was also bringing the agenda in the mainstream discourse on the rights of citizens in personal relationships.

Besides articulating our position in the context of gender just personal laws, we have also tried to raise the issue in other contexts. Including discussions on sexuality as a major theme of the Conference of the Women's Movements has been one such space. Within these conferences now there are spaces for discussions on homosexuality and also space for 'women who love women' to meet in a safe space. These efforts, in spite of the hostility and indifference of some, gave us a feeling of warmth and energy to continue to claim spaces within the network of women's groups and the movement for lesbian and bisexual women.

Since the 1990s, there have been radical and sweeping changes brought about by an economic and cultural globalisation. Sexuality has been a marketable commodity for the media. On the other hand conservative and rightist forces and values are glorifying the traditional family and traditional roles for women. There has also been along with this, a weakening of the traditional left and also a fragmenting of various progressive movements. In this scenario we are aware that we have to be more creative and use different strategies and methods to take up these issues. Keeping our platform as broad as possible to include different concerned organisations and individuals is essential today.



## AIDS Bhedbhav Virodhi Andolan (ABVA), New Delhi

ABVA was started in 1988 by a mixed group of professionals from the fields of education, health, law, etc. The group's first intervention was to block the forcible HIV testing of commercial sex workers in Delhi. Some of the reports published by ABVA include

1. *Women and AIDS*
2. *Less Than Gay—A Citizen's Report on the Status of Homosexuality in India*
3. *This Sugar is Bitter*
4. *Needle of Suspicion*

ABVA campaigned successfully for the withdrawal of the draconian AIDS bills that had been proposed. In 1992, the first open Gay demonstration was held in front of the Police Headquarters by ABVA and other organisations to protest against the Delhi Police harassment of homosexuals in Delhi Central Park.

In 1994, media attention focused on Tihar jail where the then Inspector General of Prisons, Kiran Bedi refused to allow distribution of condoms to the male prisoners on the grounds that there was no homosexual activity in the prisons, and even if there was, the prison authorities would be encouraging a crime. ABVA used this incident to initiate a public interest litigation for the repeal of Section 377 of the IPC.

## DARE—Documentation. Archive. Research. Education, New Delhi

### **A Resource Centre for Lesbians, Gays and Bisexuals**

DARE is the first of its kind in India—a resource centre to generate, document and make available information on same-sex love in a friendly and safe environment to all those interested in the subject. This includes lesbians, gay men, bisexuals and anyone who is concerned and wants to be better informed.

DARE is a group of people who care and who hope to:

- Generate awareness on lesbian, gay, and bisexual history in the subcontinent
- Counter negative stereotyping, especially the impression that homosexuality is a western import
- Provide information on legal, health and psychological issues
- Encourage academic research in various fields by providing bibliographies, source materials and guidelines to scholars
- Build an archive to preserve and visibilise our history

## **People's Union of Civil Liberties (PUCL), Bangalore**

PUCL is an organisation which, like Citizens for Democracy (CFD) was started by J.P. Narayan primarily with the intent of promoting participatory democracy. The main work of the organisation is on the social and economic issues of the rural poor, the working class and minorities. We focus on women's representation in Panchayats and combating the rise in communalism in Bangalore.

While so far, lesbian, gay and bisexual rights have not been on the agenda of PUCL, Mr Ramdas, a representative of the organisation at this workshop felt that since it was a question of violation of human rights, it was within the purview of PUCL's mandate.



## Discussions

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### I. Discussion on Positions and Perspectives

Subsequent to the perspective/ position paper presentations, there was a discussion on the fact that many women's groups believe that there are "spaces for lesbian women". Their argument is that gender segregation in our society, creates opportunities for same-sex bonding, especially between women. The lesbian and bisexual women at the workshop contended that this space is there by default, and further, that it is a space controlled by patriarchy which can be taken away at any time.

Within the women's movement too, the "space" allowed to lesbian women has been (till recently almost non-existent. Only a few responded when Vinla Farooqui in homosexuality is due to decadent country. Many feminists' reactions visibility in the movement have would endanger the space available for other women.

Women participants also spoke of differences in the women's groups were associated with resulted in to come out? To whom? To what resolve these seemingly conflicting identities as feminist and as lesbian? What would be an authentic language that did not simply import the language of lesbian, gay and bisexual movements in the West? What could / should be the relation of lesbians to the women's movement?



women's groups had Delhi stated that Western influences in our when lesbians have claimed been that claiming this space for not only lesbians but also

how the ideological and the lesbian groups they personal dilemmas. Whether extent? How? How to

The conflict of interest within gay, lesbian, and bisexual groups was a common dilemma presented by the participants: the differences between those members who want to meet socially and the activists who want to "get things done". This was the case with Khush Club, Stree Sangam in Bombay and Counsel Club in Calcutta. The latter two organisations have evolved a

format where a core group of activists meets regularly every month and social events like picnics and parties are organised every other month. Then, even among the politically informed, there are the inevitable differences in ideology and strategies for action.

The point was also made that we need to examine the specificities of spaces available to and claimed by lesbians and gay men separately. For lesbians, there is the need to claim the space to form partnerships, while for gay men, there is the need to claim public spaces free from harassment under threat of Section 377. Claims to these spaces are not necessarily mutually exclusive, though the priority needs would be different.

In the discussion, a distinction was made between men who are “Gay” – that is, men who are political about their homosexual identity, and men who have sex with men (MSM). Marriage being compulsory in India, many MSM and even some gay men find themselves in marriages. The point made in discussion was that the wives—the women in these unhappy marriages – often bear the brunt of the domestic burden, restrictions on their sexual freedom, and the risk of STDs / HIV.

One of the participants commented that the social environment has also changed dramatically in the past few years—with several talk shows, TV programmes and films on lesbians, gay men, transgendered and transvestite people.

Four of the participants who had also attended the Seminar on Gay and Lesbian Rights organised by the National Law School (NLS) students in Bangalore reported on the proceedings of that seminar.

## **II. Discussion on Legal Rights**

### ***Discussion on Decriminalisation***

A few of the participants raised the concern that in calling for the repeal of Section 377, the victims of child sexual abuse, and coercive sodomy would be left without any legal protection. Explaining further, one of the participants noted that currently there is no law that treats child sexual abuse as a separate offence. The inadequacies of the rape laws ensure that only penile penetration constitutes “rape”. Thus child sexual abusers can be, and are, booked under Section 377.

The need for a law that explicitly dealt with perpetrators of child sexual abuse was acknowledged. However, some of the participants challenged the power of the law to decide what is or is not “against the order of nature”—particularly between two consenting adults – and called for a total repeal of Section 377.

Information was then shared about a comprehensive sexual assault bill that has been drafted by *Sakshi* (a Delhi based women's group working to prevent sexual violence). One person suggested that while we support the repeal of Section 377, we could also actively support the passing of this bill that is currently before the National Commission for Women

One of the questions posed was whether it would be more productive to support the parliamentary petition route or the high court petition route for the repeal. Only the former route would result in the enactment of an anti-discrimination law. The latter would merely result in the amendment or striking down of existing law.



In the opinion of the lawyers present, the parliamentary route was more uncertain, since one could not predict if the issue would be taken up in parliament let alone when. Whereas, once a petition is admitted in a High court, a judgement has to be passed. Further, if the judgement is negative, one could always appeal to the Supreme Court

Another question raised was whether a positive judgement in the Delhi High court would be applicable in the other High courts. The answer, to the surprise of most participants was that it was not binding on other High courts. Which then prompted the suggestion that there was a need for simultaneous cases in all the high courts to be filed for the repeal of Section 377. Further, even if ABVA lost the case in the Delhi high court, the other cases would still have a chance. Again, the Supreme Court could take the decision to hear all the cases at the same time to ensure that there would be a uniform judgement applicable to the whole country

A brief discussion was also entered into on the possibility of challenging the constitutional validity of Section 377 in an United Nations Human Rights Court. This had been done in the case of the state of Tasmania in Australia. Unlike Australia, although the Indian Government has signed and ratified the Covenant, it has not signed the Optional Protocol that makes it binding on the country to implement the Articles of the Covenant. It also makes more strategic sense to actively challenge the statute in our courts first. Since the case for the repeal of Section 377 is due for final hearing within the next few months, all participants agreed that a concerted effort to revive a positive public debate in support of the repeal of Section 377 is essential. Concretely, the strategies for decriminalisation that emerged from the workshop included.

- Initiation of a signature campaign to support ABVA's petition for the repeal of Section 377
- Explore the possibilities of initiating petitions for the repeal of Section 377

### ***Discussion on Anti-Discrimination***

Following the paper presented by Mihir Desai on the *Civil Laws Affecting Gays and Lesbians* (see chapter on *Anti-Discrimination* for full details), the discussion focussed on the forms of contract other than marriage that could be used to benefit gay and lesbian partnerships. This was particularly of interest, since marriage is currently defined as a heterosexual union. As a participant lawyer pointed out, the benefits of all civil law provisions accrue to family members defined as those related by “blood or marriage”. This criterion effectively excludes gay and lesbian partnerships. A question was raised about the legal standing of “Maitri Karar”. There was no clarity on whether the legality of this contract between two individuals had been challenged in court. Many participants were also curious about the possibility of registering a partnership under the Indian Partnership Act. However, this is not possible, since this act is for profit making businesses where sales tax, auditing, income tax and other legalities are involved.

One of the lawyers present clarified that the extent to which an individual can will away self-acquired property to persons not related by blood or marriage is not limited by the law. However, only 25% of ancestral property can be willed away to “non-heirs”.

Ultimately, the fact is that gay and lesbian relationships cannot be legally recognised as a contract, and can easily be nullified by the courts. This is because homosexuality is seen as “unlawful, immoral and opposed to public policy”. Therefore, only if homosexuality is considered legal and moral, can gay and lesbian companionships (and the attendant benefits) be legalised.

As a first step, however, protection could come through explicit constitutional decree against discrimination on the grounds of sexual orientation—such as the clause incorporated in the new South African constitution.

### ***Discussion on Domestic Partnerships***

In the last section on legal rights, FIAOW made a presentation on its Visions of Gender Just Realities that includes homo-relational realities (see chapter on *Domestic Partnership* for full details). Questions were raised regarding the compulsory HIV status declaration at the time of entering into marriage on two grounds: first, the invasion of an individual’s right to privacy; and second, the fact that HIV testing is unreliable and expensive. In response, others stated that it was important that the two persons involved know each other’s HIV status; and it was not necessary for the Registrar, or the public to know.



A small debate on what would constitute the "age of consent" was engaged in with some supporting the age of 21, since by then the individual could generally be considered economically independent and mature. One person suggested that the age limit be imposed only for one partner; another suggested that no age limit be imposed at all. Those who supported 18 as the age of consent did so because this was the legal voting age, and 18 year olds can be considered mature, not to mention sexually active. It was further argued that all over the world, the age of marriage is being reduced to 18.

The most heated debate was on the issue of monogamy and polygamy, and whether to expand the ambit of relationships to include multiple relationships. Although initially there were some who found the concept far-fetched and impractical, several persons in the group wished to be/ had been/ or were currently in multiple relationships, and wanted to discuss the implications of this lived reality. They argued that in pressing for the "companionship contracts" for a "couple" we were re-inforcing the institutions of marriage and monogamy—both of which are restrictive.

As one participant put it, "we are conditioned to think in terms of serial monogamy .... and so, if A and B are in a relationship and C comes into the picture, the only option we allow ourselves to consider is that A has to break with B to enter into a relationship with C. But, maybe if there was not this conditioning, A, B, and C could have formed an alliance, a multiple

In her personal introduction, one woman expressed her apprehension at sharing her reflections on some complex issues. She had written some of her thoughts down before the workshop reproduced below.

*....As we gather today to consolidate our world view that questions and critiques the power based heterosexual mode of relating, I wonder how we should go about creating a vision of human relatedness that attempts to free itself from the defining characteristics of monogamy. I am referring to the possessiveness and exclusivity that the heterosexual mode upholds as its ideal. I believe if our ideas are to lead to a newer way of life and relationships, it is imperative that we engage ourselves in generating the emotional strength that will lead to questioning power, exclusivity and possessiveness in our personal and ideological spaces.*

*Second, as most of you, I too have been thinking about the meaning of relational commitment. If heterosexuality gave us a notion of commitment that defined itself through sex exclusively. Within this mode of relation, as you all would agree with me, sexual exclusivity relegates to a marginal space the emotional and intellectual aspects of a relationship (Though emotionality was acknowledged, it was seen as legitimate when it culminated itself in sexuality.. I want us jointly to ponder over "our" understanding of commitment. Do we need to retain the former hierarchical pattern or would we like to regard relationships to be significant and committed which have the security of sharing lives, whether they have or not the sexual sphere within their domain?*

*I look at monogamy as patriarchal, and do not see it being questioned even in lesbian relationships. My sisters and I have a strong bond and commitment without a sexual relation—what name to give this?*

In the entire history of Section 377<sup>3</sup> from 1860 to 1992, there have been only 30 cases in the High courts or the Supreme Court. Only one conviction of these 30 was in the case of two consenting adults (post Independence). The figures on the other cases are

- 18 were non consensual
- 8 were unspecified
- 4 were consensual of which 3 were before 1940
- 15 out of 30 were assault on minors

The current usage of Section 377 is therefore, primarily by the police to sexually harass and blackmail gay men even though it is a criminal offence to blackmail people.

Section 377 has also been used to intimidate women particularly those who have run away together, or those who have made their relationship known. *India Today* (April 18th, 1990) carried the story of Tarulata/ Tarunkumar who, in 1987, underwent a female to male sex change operation and married Lila Chavda in 1989. They had met five years previously, when Tarulata's sister, who was running for elections, campaigned in Dasade Muljibhai Chavda, Lila's father has gone to the Gujarat High Court saying that it is a lesbian relationship and that the marriage should be annulled. The petition contends that, "Tarunkumar possesses neither the male organ nor any natural mechanism of cohabitation, sexual intercourse and procreation of children. Adoption of any unnatural mechanism does not create manhood and as such Tarunkumar is not a male." Muljibhai has called for criminal action under Section 377. The Gujarat High Court has accepted the petition in this case.

In another report, *Bombay Times* (*Times of India*, August 8th, 1995) reported "Another tutor, student 'scandal'" in which two young women Parul and Mehernaaz (names changed in report) ran away from their respective homes and spent 10 months roaming around the country trying to live together. Finally they returned to Bombay only to be put in custody, as Parul's father had filed a case of kidnapping against Mehernaaz.

### ***Some comments on Section 377***

- 1 It does not distinguish between consensual and coercive sex.
- 2 The act of sodomy, and not homosexuality *per se*, is a cognisable offence.
3. It has not been used in cases against lesbian women, except for intimidation, and in the exceptional case of Tarulata / Tarunkumar described earlier
- 4 Heterosexual couples engaging in sodomy can be indicted under Section 377, and women often cite this as a cause for divorce

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<sup>3</sup> Shamona Khanna, "Gay Rights" *The Lawyer* June 1992

relationship on their own terms. Let us move out of the “couple” image and make new structures.”.

One person pointed out the danger of supporting multiple relationships exclusively in the context of homo-relations; while continuing to support heterosexual monogamy. Already stigmatised relationships would get even more censure. If we are to support multiple relationships, they have to be both heterosexual and homosexual. Of course, complications emerge when the relationship unit is mixed—with men and women relating both heterosexually and homosexually. How does the unit negotiate the patriarchal and heterosexist bias/ discriminations?

Further, one of the dilemmas of legally supporting polygamy/ multiple relationships is that this would be like giving a clean chit to the exploitative behaviour of many men (and women) who are involved in multiple relationships. There are many men and women who carry on more than one relationship, and their partners (wives/ husbands/ lovers—male or female) often have no choice but to accept the situation. Thus if polygamy/ multiple relationships are supported, it would be like sealing the fate of the partners completely. That is, if certain pre-conditions are not included along with the support to multiple relationships. One of the pre-conditions could be that there should be mutual consent of all the persons (presumably all adults) involved to it being a multi partner relationship right from the start, or to it becoming so some time in the future. No one partner should be able to unilaterally change the status of the relationship from monogamous to polygamous, without the possibility of inviting legal action from the other partners. This way we can decriminalise polygamy, yet not allow it to become another tool for exploitation.

FAOW members also shared that the question of several individuals who shared domestic arrangements though not necessarily sexual relationships had also been discussed in FAOW as an area for further reflection.

A need for information about the immigration/ emigration rights of bi-national lesbian and gay couples was also expressed in this session.

### ***III. Discussion on Strategies***

The last day of the workshop was spent working out potential strategies (both legal and general) for action, and the logistics of implementing them. A brief comment on the extent to which these action points have been fulfilled has also been noted, since it is almost a year after the workshop.

1. ***Press Conference***—was suggested as a means of dialogue with the makers of public opinion. In fact, the co-organisers had already scheduled a press conference for 11 November. A team was formed to draft the press release, and individual members

from each of the 4 co-organising groups volunteered as representatives. It was agreed that the press release would also be translated into Marathi. The press conference was held as scheduled, with a good turn out of reporters from over 20 papers of both the regional language and English press. The coverage too, was quite positive, barring a few factual errors.

2. **Resource book**—rather than limit the report of this workshop to just a record of the proceedings, a resource book was planned. This would include organisation addresses, a bibliography, a dateline, select newspaper clippings, etc. We visualised this book you are reading now as something of an update on the Lesbian, Gay and Bisexual scene and issues in India since *Less Than Gay* was published in 1991. On a lighter note, a name suggested for this resource book was “More than *Less Than Gay*”!
3. **Reprinting *Less Than Gay***—there was a huge demand from all the participants that ABVA undertake the reprinting. If it was unable to do so, it was suggested that ABVA give the copyright to some other group which would be willing to reprint. At present, xeroxes of xerox copies are floating about, and “the little pink book” is quite smudgy grey. An appeal letter to ABVA was drafted on the spot (with individual advance orders included as well) to be sent with Ms. Shobha Aggarwal. The suggestion was also made that if reprinted, firstly, a better font and text layout be considered to make it reader friendly; and second, translation into regional languages be considered in the cost. The update is that ABVA has committed to reprinting *Less Than Gay*, and is currently in the process of generating the funds to do so.
4. **Expand the platform of organisations and individuals** participating in these issues by the next workshop. Counsel Club, Calcutta has taken the initiative to try to host the next workshop, by when it is expected that all the groups involved in this workshop will have mobilised more supporters.
5. **Compile a Directory** of lesbian, gay and bisexual organisations, and other supporting organisations, health professionals, lawyers, media persons, etc. Counsel Club Calcutta undertook to co-ordinate the publishing of this directory. The first step planned was to draft an information sheet that would be mailed to all groups and individuals to identify if they wanted to be included in the directory.
6. **Initiate signature campaign** in support of ABVA petition to repeal Section 377. Organisations (lesbian and gay, women’s groups, human rights, and other progressive groups) and individuals will be mobilised in support.
7. **Documentation of the Lesbian, Gay and Bisexual movement in India**. All agreed that the momentum of gay, lesbian, and bisexual events and organising in



the past decade has really picked up, particularly these past few years. Even two years ago it was quite difficult to conceive of different groups coming together on a common platform. Video documentation, oral histories, collection of archival material, a slide documentary, publishing a book on the contemporary history of the movement – all of these were suggestions made. While some of this documentation is already taking place in an ad hoc fashion, it would require concerted commitments of time and financial resources to produce something professional and effective. It was suggested – and agreed upon – that a dateline of events and activities be incorporated in the report of this workshop (See chapter Dateline)

8. ***Strengthen the existing lesbian, gay and bisexual networks*** – with a particular focus on outreach to lesbians. Also, the need was expressed for continuation of the dialogue initiated between lesbians and gay men in this workshop. E-mail addresses were shared as a means of staying in touch; and connecting with international e-mail fora like Khushnet
9. ***Production of material to create awareness*** – many NGOs and community based groups – would appreciate material in regional languages that address the “myths and realities” of gay, lesbian, and bisexual existence in India. This is particularly needed in rural areas, where there is a total silence on these issues, and the availability of such material could be used as a trigger to initiate discussions. These materials could be in the form of pamphlets or posters. The idea of posters with photos or visual images was strongly recommended since it would be useful across language and literacy barriers. Human Rights Law Network volunteered to undertake the printing of such material if the matter was prepared
10. ***Identify a “day” and create a word/ symbol*** — as rallying points for those involved in lesbian, gay and bisexual issues in India

#### ***IV. Feedback***

- ☺ Upbeat and optimistic – was the general tone of the response on the workshop. Most participants felt they had learnt something new, got some action going which they felt hopeful about, made new friends, and had a good time.
- ☺ Although the relaxed, conflict free atmosphere was appreciated by all, there were several people who felt that stricter adherence to the time frame would have ensured that all points on the agenda received adequate attention. Morning exercises were suggested as a means of energizing and focusing everybody

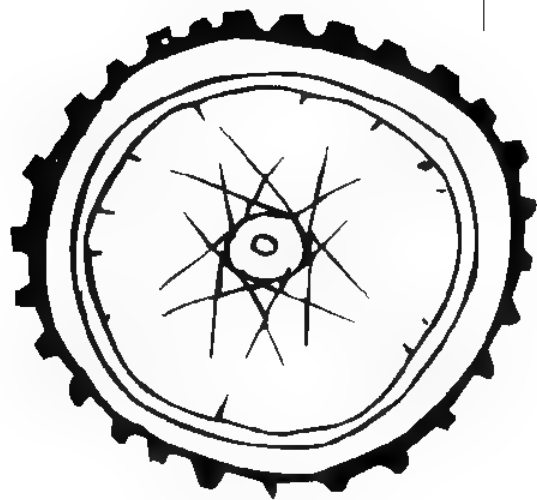
- ☺ Many felt that what we had achieved was a significant historic first. They were enthusiastic about the action planned, the networking established and the potential formation of a national, umbrella organisation for lesbian, gay and bisexual issues.
- ☺ There were others though, who had higher expectations — both in terms of participation and work accomplished. Among them, some felt that the group had not articulated concrete legal strategies beyond repeal of Section 377. Another lacuna expressed was the absence of any presentation and analysis of the history and ideological basis of the lesbian, gay and bisexual movements in other countries.
- ☺ There was the complaint that there was not enough time/space for experiential sharing. One participant had the idea of a “Cope Kit” on various issues like: *how to come out (to family, friends, employer, etc.); how to deal with relationships and break ups*, etc. Such “kits” could be developed from shared experiences.
- ☺ The crucial importance of creating and sustaining support systems for lesbians and gay men was highlighted by a long time lesbian activist who today feels burnt out because she struggled for visibility without such support.
- ☺ For many of the lesbian, gay and bisexual participants it was a “first” extended interaction which helped dismantle personal stereotypes and prejudices about what “the other” was like.
- ☺ Women — lesbian and straight — remarked on the fact that this was one of the few meetings where they did not feel the “patriarchal male presence” and “space taking”. This was not, they said, just because men were in fewer numbers at this meeting — there have been other fora where just one or two men have attempted to dominate the show.
- ☺ Straight people — men and women — being in a minority at this workshop were applauded for their courage in sticking their necks out and risking the stigma of being labeled “gay”.
- ☺ Language constraints were expressed by both those who did not speak Hindi, and those who primarily spoke Hindi. As the workshop was conducted mostly in Hindi — or in English with Hindi translations, individuals who were not fluent in both languages had occasional difficulties in understanding and communicating. These language constraints could have a significant bearing on the future of the lesbian, gay and bisexual movement in India. Those of us involved in the movement should evolve ways of addressing such barriers or constraints. One way would be greater use of regional languages in conducting debates and discussions on issues related to the movement.



## Participants at the workshop

Name	Organisation	Address
Shobha Aggarwal (representing  both ABVA & DARE)	<b>AIDS Bhedbhav Virodhi Andolan (ABVA)</b>	Post Box No. 5308 New Delhi 110053
	<b>DARE - Documentation. Archive. Research. Education (New Delhi)</b> A Resource Centre for Lesbians, Gays and Bisexuals	Post Box No.7180 Indraprastha HPO New Delhi 110002
Manohar Elavarthi and Arunesh	<b>Sabrang</b>	Post Box 7625 Bangalore 5670070 Email: <a href="mailto:sabrang@mailcity.com">sabrang@mailcity.com</a>
Pawan Dhall, Ranjan	<b>Counsel Club</b>	c/o Ranjan Post Box 794 Calcutta 700 017
Ramdas	<b>People's Union of Civil Liberties, Bangalore</b>	
Geeta, Shalini, Chayanika, Bina Fernandez, Gomathy	<b>Stree Sangam / Women Coming Together Collective</b>	Post Box No. 16613 Matunga Mumbai 400 019
Mihir Desai	<b>Human Rights Law Network</b>	Engineer House, 4th floor 86, Mumbai Samachar Marg Mumbai 400 023 Ph: 2677385, 2676680 Fax: 2632718 Email: <a href="mailto:huright@giasbm01.vsnl.net.in">huright@giasbm01.vsnl.net.in</a>
Kamayani Bali, Preeti Verma, Hasina Khan	<b>India Centre for Human Rights &amp; Law</b>	5th Floor, CVOD Jain High School, 84 Samuel Street, Dongri, Mumbai 4000 009 Tel.: 370 2592, 379 0699 E-mail: <a href="mailto:huright@giasbm01.vsnl.net.in">huright@giasbm01.vsnl.net.in</a>
Maya Sharma	<b>Delhi Group</b>	
Sandhya Gokhale, Vridula, Nandita Shah, Sanskriti, and Hasina	<b>Forum Against Oppression of Women</b>	c/o 29, Bhatia Bhavan Babrekar Marg Off Gokhale Road Dadar (West) Mumbai
Ganesh, Nitin, Razia, Dimple, Mita Radhakrishnan, Tapas and Nascem.		

# Dateline





# DATELINE



It is, of course, problematic to reconstruct any history, especially a very recent history such as the history of the lesbian, gay and bisexual peoples' movement in India. It is even more so, since most of the individuals who are part of this movement are still around. Each may have differing perspectives on the events, and would point to gaps, inconsistencies. There have been so many efforts - some successful, some not - at reaching out, supporting each other, making our lives visible to ourselves and the world at large. Along with these efforts, there have been so many shifts in perspectives, in ideologies, alliances and strategies as our contexts change.

Then there are the countless individual stories. Each one of us has an effect in our lives, touching all the people we are in contact with - family, friends, lovers, colleagues, neighbours... - and each story is a part of our collective history. All of these stories need to be told - and heard - in full. We hope that someone will take up this challenging task. For now, what we have attempted in this dateline is a brief reconstruction of events. Our sources have been information we had available to us from the participants at the workshop; as well as from *Down the Years: A Datebook of the South Asian Lesbian & Gay Movement* (Trikone, Tenth Anniversary Special Issue, Jan 1996, Vol 11 No.1, pp.14-15). As part of generating this "collective history", we also contacted several individuals and organisations who have been involved in lesbian and gay activism. There will inevitably be gaps in the dateline - but we hope that these will be filled in when a more comprehensive history is compiled.

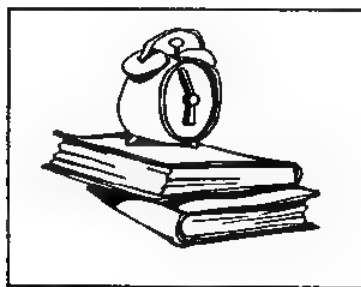
We know there are limitations to this form of a "dateline". First, because many of the ongoing support and networking activities cannot be boxed into date or time specifics. There was the mutual counselling, the letters written to lesbians and gays isolated in small towns and the social spaces created in the homes of some individuals. Then there were also the international conferences and seminars attended by Indian gay men and lesbians to raise awareness about the situation in India, the support from gay and lesbian visitors from abroad. All of these activities are almost impossible to document in the form of a dateline.

Then there was the question of when to start from? References to same-sex love in all parts of India have been found right from ancient times - in literature, anecdotal stories, art, and temple sculpture. We chose the Urdu writer Ismat Chughtai's story *Lashaaf* (*The*

*Quilt*) as our starting point. The story itself is not politically conscious - it is the story of a lesbian relationship as seen through the eyes of a young girl. However, the public debate generated when the author was charged for obscenity by the Lahore government brought the issue of same-sex love into public debate - probably for the first time in India in this century.

It has also been difficult choosing events in the larger history of the South Asian lesbian and gay movement (particularly in the US and UK) to include in this dateline, since the varied levels of inter-connections are deeply symbiotic. We felt it important to recognise in this dateline the importance of some of the events in the U.K and U.S because of their ripple effects in India.

The problematics of datelines aside though, we have much to be proud of. Just putting together all the pieces to form the whole (even with its limitations) has been exciting. Our hope is that this dateline conveys a glimpse of the struggles of different individuals and groups to visibilise our existence in the past few decades.



Year	Event
1941	Ismat Chughtai's short story "Lihaaf" is published. The obscenity charge levied against the author by the Lahore government is overturned in court by the judge who ruled that the story could only be understood by someone who already had some knowledge about same sex relations (and therefore could not be said to "corrupt" innocent minds).
1981 Aug 15	<i>Matrachi Gosht</i> - a lesbian theme play in Marathi written by eminent playwright Vijay Tendulkar opens in Mumbai and Thane. The play portrays the inner conflict of a woman who realises she is lesbian. It was well received, and ran for 26 shows.
1978	Shakuntala Devi's book <i>The World of Homosexuals</i> is published. This is noteworthy as the first Indian book that has attempted a serious, unbiased discourse on the issue of homosexuality in general as well as in the Indian context.
Late 1970s/early 1980s	<i>Gay Scene</i> - a journal is brought out by some individuals in Calcutta in the late 70s / early 80s. The journal did not last long, and unfortunately nothing is known about the whereabouts of those individuals now <sup>1</sup>
1985 May	<i>Anamika</i> - the first South-Asian lesbian newsletter brought out in New York City by two women from India who had gone to the US to study. Copies are circulated among women in India too.
1985	Nairobi Women's Conference <i>Workshop on Lesbianism</i> is attended by some Indian women
1985	<i>My Beautiful Laundrette</i> - London based Hanief Kureishi's film with a South Asian gay character is released. There is limited private circulation in India
1986 Feb	<i>Savvy</i> magazine publishes Ashok Row Kavi's coming out interview - a first for the Indian media
1986 Jan	<i>Trikone</i> - first issue of a newsletter brought out by two gay men in San Francisco. TriKone starts to get letters from gay men all over India.
1986 Apr	There is a Hijra conference in Bhopal, India.

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Reported by "*Shakti Khabar*" - published by SHAKTI, London in 1990 which has a few issues of the journal in its archival collection



5. It is currently being used actively by groups working to register cases of child sexual abuse, since the existing rape laws do not cover child sexual abuse. The clause in Section 377 “against the order of nature” is used in cases of sexual abuse of children.

### ***The Case for the Repeal of Section 377***

First of all, the definition “unnatural acts” is Victorian and obsolete. Consensual sex between two adults (over 18) should be protected by an individual’s constitutional right to privacy. Further, section 377 violates Article 14 of the constitution since it discriminates against persons on the basis of sex and therefore sexual orientation. In fact, this antiquated statute has been repealed even in Britain, the country of its origin.

Along with the repeal of Section 377, there is an urgent need for the enactment of a comprehensive sexual assault law which firstly, broadens the definition of sexual assault beyond the limited scope of “penile penetration” (heterosexual or homosexual), and secondly differentiates assault on minors and adults. Such a law should also determine a common age of consent for sexual activity (lesbian, gay or heterosexual).

## **II. Protection from Human Rights Abuses/ Hate crimes**

Men and women who are identifiably, openly lesbian and gay face violence and the persistent threat of violence. This may take the form of verbal and physical assault on the streets, death threats, and even murder. This has been justified “because he/she was gay”.

It also takes the form of psychological violence on men and women who are subjected to shock therapy, aversion therapy and incarceration as “treatment” for their “problem”. Many women have gone through the humiliation and trauma of having their bodies mutilated in this “normalisation” process. We want to stress that this happens even for women who are not transsexual (i.e, who do not feel that they were born into the wrong sex or in the wrong body). In a society which sees the possibility of a relationship only between men and women, women who love women are considered aberrations and the medical community thus “cures” them by these extreme steps.

In 1994, after a 17 year debate, Amnesty International finally recognised violence against lesbians and gays as a human rights abuse in its book, ***Breaking the Silence: Human Rights Violations on the Basis of Sexual Orientation***.

- 1987 Dec A series of press reports cover the marriage of Leela and Urmila two policewomen in Bhopal who were discharged from service for "conduct unbecoming public servants". This sparks dialogues in women's groups on lesbianism. Women's groups conduct a signature campaign demanding the reinstatement of the women
- 1987 **Sneha Sangam** - a gay group forms in Bangalore which organises their first major gay party in 1992. The group later disbands.
- 1988 **Shakti** and its publication *Shakti Khabar* begins in London
- 1989 **Delhi Group** - a group of lesbian feminists start to meet, both socially and formally
- 1990 1992 **Red Rose** meetings start in Delhi at the initiative of two gay men and two lesbian women. A red rose placed on the table at Madras Coffee House in Connaught Place (later at Lodi Gardens) acts as an identifier for gay and lesbian people who wanted to meet. Over the year, the numbers attending these meetings increased to about thirty - primarily of men
- 1990 Apr 18 *India Today* reports the story of Tarulata and Lila Chavda (in Gujarat) who had been in a relationship since 1985. Tarulata in 1987 underwent a female to male sex change operation, became Tarunkumar and married Lila Chavda in 1989. Lila's father, Muljibhai, filed a criminal case under Section 377. The case subsequently disappeared from public notice
- 1990 *Asian Lesbian Network Conference* - in Bangkok is attended by Indian lesbians from Mumbai and Delhi who meet each other for the first time
- 1990 Jun *Bombay Dost* - India's first gay and lesbian magazine makes its debut in Mumbai
- 1990 Jul About 50 gay men and lesbians meet in Delhi to protest the infiltration of a private group by a journalist posing as homosexual.
- 1990 Sep *Freedom* - newsletter from Gulbarga starts. Closes down after a few issues, is revived after a while in a new incarnation from Bangalore, only to fold up again.
- 1990 Dec Single women fight for their own space within the Vth National Women's Conference at Calicut. Many lesbians are part of this workshop

- 1990 Dec 1991 Dec      **Fun Club** starts in Calcutta. Pioneers the concept of large social gatherings for gay men in Calcutta. It organises two such occasions in Oct & Nov 1991, but closes down soon after, in Dec 1991.
- 1991 May      *Khush* - Pratibha Parmar's film on the South Asian lesbian and gay experience is released. There is limited private circulation in India.
- 1991 Jul      **Sakhi** - a Lesbian Resource Centre forms in Delhi as the first openly lesbian group involved in networking, research and documentation of lesbian images and history in South Asia. Letters from lesbians all over India (particularly small towns) start coming in.
- 1991      Three lesbian women join the board of *Bombay Dost*. They too network with lesbian women writing in from other parts of the country, and abroad
- 1991 Nov      *Less than Gay - A Citizens' Report on the Status of Homosexuality in India* is published by **AIDS Bhedbhav Virodhi Andolan** (ABVA), New Delhi.
- 1991 Dec      *Pravartak* - the first issue of the journal brought out from Calcutta. A long gap follows the third issue in Mar 1992; and the journal is revived in 1993.
- 1991      *Jamali-Kamali* garden meetings. Some gays and lesbians start to claim as a meeting space the garden in Delhi where Jamali, a gay Mughal poet was buried next to his lover Kamali. Along the same lines of claiming public spaces, Pragati Maidan's circular hall is hired for a gay party.
- 1992      A group of lesbians meet in Delhi to discuss amending *Less than Gay* to make it more representative of lesbians.
- 1992      Petition for the Repeal of Section 377 is moved by ABVA in the Petitions Committee of Parliament.
- 1992      "Martina Club" - high school girls are expelled for forming a lesbian group in Kerala. A joint statement is signed by several women's groups and feminist activists condemning the expulsion.
- 1992 Jul      *Friends India* journal is published in Lucknow by the group of the same name. The journal's new avatar is *Sacred Love*.
- 1992 Aug 11      There is a demonstration in front of Delhi Police headquarters to protest the police's harassment and arrest of suspected homosexual persons under Section 72/73 of the Delhi Police Act.

- 1992 Nov 200 gay men, lesbians and supporters walk out of the International AIDs Conference in protest of homophobia and discrimination against gay men. They regroup and hold a parallel conference at Nehru Gardens, New Delhi.
- 1992 Sakhi calls for inclusion of its name in the address list of women's organisations published in the Jagori and Kali for Women annual diaries
- 1993 Jan **Friends of Siddhartha Gautam** organise screening of films with lesbian and gay themes to commemorate the life of Siddhartha Gautam. Siddhartha was one of the first few openly gay activists and the moving force behind *Less than Gay*. He died of Hodgkin's disease in 1992. The film shows are now an annual event in Delhi: in 1997, around 400 people attended
- 1993 Mar **Khush Club** - a group forms in Mumbai of gay men, which dissolves after a couple of of years
- 1993 Mar **Udaan** - a group of working class gay men forms in Bombay whose members prefer to be known as "panchis" (birds).
- 1993 Apr Sexuality session at the Northern Regional Women's conference at Kanpur where the issues of lesbian women are discussed.
- 1993 Aug **Counsel Club** forms in Calcutta as a les-bi-gay support group. Decides to revive the defunct *Pravartak* as part of its larger agenda
- 1993 Aug *Kiss of the Spiderwoman* - a Hindi adaptation of the novel by Manuel Puig is directed by Rustom Bharucha in Delhi.
- 1993 Sep **Pride Publications (Pvt.) Ltd.** forms in Mumbai for the production of Bombay Dost.
- 1993 Sep *Arambh* magazine debuts in Delhi.
- 1993 Dec **Samraksha** - an AIDS awareness organisation forms in Bangalore.
- 1993 Dec *History of Alternate Sexualities in South Asia* - a seminar is organised in Delhi by Sakhi and the NAZ Project, London.
- 1993 Dec *Varun* - a gay play written by members of **Arambh** and directed by Barry John is staged in Max Mueller Bhavan, Delhi.
- 1994 Jan There is an impromptu *Lesbian Meeting* at the Fifth National Conference of Women's Movements in Tirupati. Sexuality is a main theme for the first time at the Conference, with lesbian sexuality as a sub-theme.

- 1994 Feb **G.A.Y** (Good As You) - group forms in Bangalore for lesbians, gays and bisexuals.
- 1994 Apr **Humsafar Trust** - India's first gay NGO is registered.
- 1994 Jun ABVA files public interest litigation for the repeal of Section 377 in the Delhi High Court.
- 1994 Jul Lesbian study circle meets privately in Delhi.
- 1994 Women's groups and gay groups protest against Vimla Farooqui (of the National Federation of Indian Women) who wrote to the President of India asking him to withdraw permission for the upcoming gay men's conference. Signature campaign is initiated by **Jagori** in Delhi.
- 1994 Nov India allows hijras to choose gender while voting
- 1994 Dec *Humsafar-Naz Conference for Gay men and men who have sex with men* in Mumbai co-ordinated by Humsafar Trust and NAZ Project. About 60 delegates from India, South & South-East Asia, as well as the South Asian diaspora attend the five day event. The conference is widely - and mostly positively - covered in the national / international media.
- 1995 **Saathi** - a gay support group forms with chapters in New Delhi (Noida), Hyderabad / Secunderabad and Cuttack. Its birth coincides with the closure of the Secunderabad based **Gay Information Centre**.
- 1995 Mar Classic Books, Calcutta invites Counsel Club and Humsafar Trust to stock copies of their journals at their outlet. People Tree in New Delhi was already doing so at that time.
- 1994 Sep **Aniketan** - an AIDs awareness group forms in Mumbai. They organise an "Open Discussion on Sexuality" (Maanavi Lyngikatha - Vividh Pahaloo") for social activists. More than 80 people attend. The second day focusses on discussion of gay, lesbian and bisexual issues.
- 1994 **Khush Manch** forms in Mumbai as a gay and lesbian, anti-sexist, anti-communal forum. Closed within six months of its inception
- 1995 Oct Activist Anuja Gupta represents India as a testifier at a tribunal on human rights violations against sexual minorities organised by the International Gay and Lesbian Human Rights Commission at New York
- 1995 Oct *Naz ki Pukar* - newsletter is begun by the Naz Project.

- 1995 Dec Counsel Club decides to add prefix "Naya" to its house journal *Pravartak's* name, after another voluntary group with a registered Bengali monthly of the same name protested the use of the name for something as "disgusting" as homosexuality.
- 1995 - 1997 *BomGay, Fire, Kamasutra, Out in Bombay, Trying to Grow, Dayra, Tamanna*, - there is an explosion of films and documentaries that explore the themes of lesbian, gay and transgendered sexualities in India.
- 1995 "Homo-relational realities" - the right of lesbians and gay men to marriage and the attendant legal benefits are articulated by Mumbai based women's group - Forum Against Oppression of Women (FAOW) in its paper *Visions of Gender Just Realities*
- 1995 Mar **Samraksha**, Bangalore - organises a conference on "Legal issues in the prevention and care of AIDs" at which a paper is presented by Manohar Elavarthi on "Homosexuality - Law and police in India" which demands the repeal of Section 377.
- 1995 Mar 8 There is a lesbian and bisexual women's party for International Women's Day in Delhi.
- 1995 Apr **Stree Sangam** forms at first picnic for lesbian and bisexual women in Mumbai.
- 1995 Apr 22 "The Legal Struggle for Repeal of Section 377 IPC" - a meeting is convened in Delhi by ABVA which is attended by 34 participants working in the areas of gay and lesbian rights, human rights, gender, health, law and HIV/AIDS.
- 1995 Oct **Humsafar Centre** is inaugurated in Mumbai.
- 1996 May 30 *Lesbian and Gay Rights in India* - a presentation is made at the conference on Gender Just Laws by the Working Group. The conference is attended by women's groups, human rights groups, lawyers and activists; and the paper receives an overall positive response.
- 1996 Jun Stree Sangam organises the *First National Gathering of Women who love Women* in Mumbai. Thirty women attend - primarily from Delhi, Bangalore, Pune and Mumbai.
- 1996 Jun *The Alien Flower* - a dance drama based on poems about a gay man's life is performed in Calcutta by Sapphire Creations Dance Workshop

- 1996 Aug-Sep Four Counsel Club members participate in "Sandhukhan" - a discussion on homosexuality on All India Radio, Calcutta.
- 1996 Sep Humsafar Trust organises a workshop on Section 377 with a lawyer as resource person
- 1996 *Sakhiani: Lesbian Desire in Ancient and Modern India* - by Giti Thadani, is published. It is the first book on lesbian history in India
- 1996 Helplines run by the Naz Foundation (India) Trust are started **Sangini** for women and **Hamraz** for men
- 1997 **Darpan** - a bi-monthly newsletter for gay men in Delhi is started by the group **Humrahi**.
- 1997 *Timeshare* - a journal for gay men is started by the gay men's group **Aasra** in Patna
- 1997 Jan *Network East* - a conference is organised by Counsel Club for its members and friends in eastern India. Participants were from West Bengal, Bihar, Assam and Orissa
- 1997 Mar Counsel Club participates in a seminar on "Human rights of marginalised communities" organised by a group of civil rights activists, and presents a paper on the rights violations faced by gay people
- 1997 Aug Copies of *Trikone* are seized by the Customs department from Counsel Club member under the Customs Act, 1962, for commercial violations and on the grounds that the import of such literature is "derogatory to the morality and social system of our nation"
- 1997 Sep **Sabrang** - a group of a mixed group of people forms in Bangalore to address the spectrum of gender and sexuality issues
- 1997 Sep *National Seminar on Gay Rights* is organised by students of the National Law School, Bangalore. Receives positive media coverage
- 1997 Nov *Strategies for furthering Lesbian, Gay and Bisexual Rights in India* - a workshop is organised in Mumbai by Stree Sangam, Counsel Club, Forum Against Oppression of Women & Human Rights Law Network. Two of the strategies agreed upon are the launch of a nation wide campaign for the repeal of Section 377 and this resource book (!). Media coverage at the press conference after the workshop is also quite positive

- 1997 Dec West Bengal Sexual Health Project Annual Conference has 3 presentations on same sex issues. Support is generated for a campaign to repeal Section 377.
- 1997 Dec Population Services International is dragged to court under section 377 for "promoting homosexuality" on radio programme "Balance Barabar".
- 1997 Dec The first edition of the *Gender Just Laws Bulletin* produced by India Centre for Human Rights and Law, Mumbai focuses on gay, lesbian and bisexual rights.
- 1997 Dec *Meeting for women who love women* - is officially part of the programme of the VIth National Conference of Women's Movements at Ranchi. The meeting is convened by Stree Sangam, and attended by 30 women. Stree Sangam also conducts a separate workshop for straight women who are supporters of lesbian issues. The signature campaign for the repeal of Section 377 is also conducted here.
- 1997 **Tata Institute of Social Sciences** Social Work Educator's Forum becomes the first organisation in India to include in its mission statement a clause preventing discrimination on the grounds of sexual orientation.
- 1997 Humsafar Trust - organises a series of workshops for members on "How to fight goondas", "How to stand up to police harassment" and "Syndromic medico-legal problems".
- 1998 Feb The first issue of *Sangha Mitra* - Les-bi gay newsletter in Kannada and English is published in Bangalore. CED Bangalore agrees to stock copies
- 1998 Feb Seagull Bookstore, Calcutta agrees to stock copies of *Naya Pravartak* and *Bombay Dost* on an experimental basis. The arrangement with Classic Books was wound up in late 1997 because the new management felt the journals were creating a "limited" (read negative) image for the bookshop
- 1998 Apr Counsel Club participates in a 3-day Development book fair organised by Sahay, Calcutta. Distributes copies of *Naya Pravartak* and *Bombay Dost* and uses the forum to conduct the signature campaign for the repeal of Section 377.
- 1998 Apr **Sarani** - a Calcutta-based experimental performing arts troupe stages *Coming Out with Music* - possibly the first music and dance performance entirely on gay themes in India.



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- 1998 May *Second National Gathering of Women who love Women* organised by Stree Sangam in Mumbai.
- 1998 Aug Over 100 people attend *Emerging Gay Spaces in Bangalore* - a public lecture by Chandra Balachandran that is organised by Sabrang.
- 1998 Nov *Fire* - a film by Deepa Mehta about a lesbian relationship in a middle-class Delhi house-hold is finally cleared by the Censor Board of Film Certification and released in India - uncensored.
- 1998 Dec 2 & 3 After two weeks of house full shows, members of the Shiv Sena vandalize the theatre and violently disrupt screenings of the film *Fire* in Mumbai and Delhi. Maharashtra Chief Minister Manohar Joshi praises the Shiv Sainiks for their actions. Theatres are forced to stop further screenings of the film.
- 1998 Dec 5 Centre decides to refer *Fire* back to the Censor Board for re-evaluation.
- 1998 Dec 7 Dilip Kumar, Mahesh Bhatt, Javed Akhtar, Yash Chopra, Atul Setalvad, Hosbet Suresh and Teesta Setalvad file a Writ Petition in the Supreme Court urging Chief Justice A.S. Anand to seek an explanation from the Maharashtra government for its failure to provide protection to the screening of *Fire*.
- 1998 Dec 7, 10, 12 Peaceful demonstrations protesting Shiv Sena vandalism in Mumbai and Delhi. Massive poster campaign organised by activists in Mumbai faces severe repression from the police.
- 1998 Dec 15 Supreme Court issues notices to the Union and Maharashtra governments seeking a police investigation into violent protests over screening of *Fire*. The court clarifies that it has nothing to do with either Censor Board or content of *Fire*, but the larger issue of settling grievances by resorting to violence.

2003



# Outings in the Media



- ∞ Highlights of  
Newsclippings
- ∞ Films
- ∞ Theatre and Dance

### 3. Anti-Discrimination/ Equal Opportunity Laws

We know that the law reflects the prejudices and norms of existing societies, and thus marginalises some members within the framework of society. This is the case all over the world. But it need not be so. In fact, the law should help counter the prejudices and protect the rights of marginalised sections. This would mean having clear anti-discrimination laws for the threatened communities. The enactment of such legislation would ensure that the rights of lesbians and gay men are protected particularly in the areas of housing, education, employment, insurance and health care.

Article 2 of the *Universal Declaration of Human Rights* states that, **"No person should be discriminated against on the basis of race, sex, religion, caste, colour, or any other status."** Many countries have introduced "Sexual Orientation" as a clause within this anti-discrimination framework.

#### **Countries that have explicit Anti-discrimination laws incorporated in their legal statutes**

- 1981 Norway introduced anti-discrimination legislation including lesbians and gays<sup>1</sup>
- 1985 France
- 1987 Denmark
- 1993 Sweden, Holland, Ireland
- 1993 New Zealand introduced The Human Rights Act which explicitly includes sexual orientation as a new ground for anti-discrimination<sup>2</sup>
- 1994 South Africa was the first country to explicitly safeguard the rights of lesbians and gays in the Constitution<sup>3</sup>
- 1996 US Supreme Court order that no state can pass legislation that discriminates against lesbians and gays (Previously, different states had different statutes)

Despite the gains that have been made internationally on the enactment of anti-discrimination legislation, in the past two decades, new, regressive legislation has been introduced in the UK. In 1989 where Section 28 of the Local Government Act states that it is, "Illegal for local government to

<sup>1</sup> Ministry of Children and Family Affairs, *The Norwegian Act on Registered Partnership for Homosexual Couples* (Norway, 1993), p. 5-6

<sup>2</sup> Human Rights Commission - New Zealand, *The Human Rights Act* (New Zealand, 1993)

<sup>3</sup> *Ugandan Rules: Sexual Orientation and Women's Human Rights*, ed. Rachel Rosenbloom, (U.S.A. International Gay and Lesbian Human Rights Commission, 1995), p. 187



## OUTINGS IN THE MEDIA

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**T**he media in India - particularly the press - has been largely positive in its coverage of lesbian, gay and bisexual issues. This has helped the movement not only in building greater social support, but also, more directly in that each time articles were written or T.V. talkshows were conducted, letters would come in from isolated men and women all over the country. People who thought they were "the only one" could now link up to the growing gay, lesbian and bisexual networks in the country. As this listing grew, we decided to restrict it to newspaper references to Indian (including the South Asian Diaspora) events, since most newspapers regularly feature articles on gay, lesbian, bisexual events in other countries.

### Highlights of News Clippings

- |                |  |
|----------------|--|
| Mid 1984       | A journalist in New Delhi and a counsellor in Bombay team up to write a small yet serious article on homosexuality in <i>Sunday Mid day</i> , Bombay. The article talked about homophobia in Indian society and the consequent invisibility and isolation faced by gay people in India. Quite possibly the first article of its kind in the Indian media, it carried a Delhi contact address for gay people in distress to write to. |
| 1986 Feb       | <i>Savvy</i> magazine publishes Ashok Row Kavi's coming out interview - a first for the Indian media.  |
| 1986 Feb 16 22 | <i>The Week</i> . "Gays not so Gay - Indian homosexuals too have been alarmed" - cover story with a focus on AIDS among homosexual men.  |
| 1987 Jan       | <i>Society</i> magazine article by Arthur Pais about <i>Trikone</i> the gay, lesbian and bisexual South Asian publication based in San Francisco.  |

- 1988 Feb 27 *Indian Express*. "Married Policewomen may be Reinstated" - reports of Leela and Urmila in Bhopal.
- 1988 Mar 19 *Eve's Weekly*. "Love between two women" Sandhya Srinivasan finds out what the average Indian thinks of a homosexual relationship in the wake of Leela and Urmila's dismissal.
- 1988 Mar 20 *The Illustrated Weekly of India*. "Two's Company" - investigative report of Leela and Urmila in Bhopal.
- 1988 Mar 20-26 *The Week*. "The Daring and the Damned" - report of Leela and Urmila.
- 1988 May 7 *Indian Express*. (Bangalore edition) - Asaruna Gohil and Sudha Amarsingh entered into "Matri Karar" in Gujarat.
- 1988 Jul 31 *Sunday* "The love that dare not speak its name" - cover story by Mukund Padmanabhan et al.
- 1988 Sep *Illustrated Weekly of India* - article about *Trikone*, *Khush* and Urvashi Vaid
- 1988 Date unknown *India Today*. Gita Darji and Kishori Shah of Meghraj, Gujarat, two nurses in the local hospital ended their lives in the hospital quarters because they could not bear the separation which was to be enforced by Gita's brother after her marriage
- 1989 Feb *India Today*. "Out of the Closet: Sense of liberation sweeps Indian gays in the U.S." - a report profiling *Trikone* by C S Nagarkatti.
- 1990 Mar 25 *Sunday Mail*. "Gay Shakti" - a profile of the emerging south Asian gay movement in the U.K, with a focus on the London based group *Shakti*, by Ashok Row Kavi.
- 1990 Mar 25 *Sunday Mail*. "The Two Who Got Away" - the story of two girls from Bombay, Namrata Desai and Mallika Sharma - who ran away to Australia where Mallika was to undergo a sex change operation, and then marry Namrata. Author: Mohan Deep.
- 1990 Apr 18 *India Today*. Tarulata in 1987 underwent a female to male sex change operation and married Lila Chavda in 1989 in Gujrat. Lila's father, Muljibhai has called for criminal action under Section 377
- 1990 May 20 *Sunday Mid day*. "Bombay se aaya mera Dost" - on the launching of Bombay Dost

- 1990 May 15      *The Daily*. "The Not so Happy Gay Lucky" - on the launching of Bombay Dost.
- 1990 June 3-9    *Sunday*. "Happy to be this way" - on the launching of Bombay Dost.
- 1990 Aug 5      *Indian Express*. "With Gay Abandon" - on the launching of Bombay Dost.
- 1990 Jul 29      *Sunday Observer*. "A Quiet Assertiveness", "Lesbianism as a Political Act", "Ardhanarishwara, Kabir and AIDS: a Continuum" - articles by Sudheendra Kulkarni and Prabha Jagganathan.
- 1990 Nov        *Society*. "All the Gay News that's Fit to Print" - a report on *Bombay Dost* by Ashok Row Kavi.
- 1991 Mar 3      *The Economic Times*. Calcutta. "Painting the Peripheral." - a profile of painter Bhupen Khakkar and his paintings with homosexual themes.
- 1991 Jul 28      *Sunday Mid-day*. "Pop goes the Myth" - the Bombay Dost board meets the media.
- 1991 Jul 17      *Indian Express*. "11 Million Invisible Men in the Decade of AIDS" - by C.Y Gopinath.
- 1991 Aug 23      *Femina*. "Rewriting Sexual Norms" - Shanta Gokhale writes of the world of lesbian women.
- 1991 Oct        *Debonair*. "MYTH: Homosexuality is a Western phenomenon" - survey on sex and sexuality by Mira Savara and Sridhar.
- 1991 Nov 23      *The Telegraph*. "Plea to Legalise Gay Marriages"
- 1992 Jan 29      *Indian Express*, Madurai. "Lesbian Group in Kerala School" - report of seven school girls in Thiruvananthapuram who were expelled for forming the "Martina club"
- 1992 Feb 9      *The Pioneer on Sunday*. "Far from Gay" - about efforts of Gays in Delhi to organise by Sabita Tekkeveetil
- 1992 Feb 12      *The Pioneer*. "Peeping into the Closet" - a review of Arvind Kala's book by Kajal Basu.
- 1992 Mar 16      *Business India*. "Bombay Dost: Gay Voice," by Mira Savara and Madhav Reddy.



- 1992 June 21      *The Week*. "Queer Dilemma - Gays Want Sodomy Law Repealed" - by Arvind Kala
- 1992 Jul 15        *The Pioneer*. "Police Harasses and Hounds Delhi Gays" - Dr. Sahni of ABVA interviewed about the police campaign to "clean up the parks in Central Delhi".
- 1992 Aug 16 22    *Sunday*. "Glad to be Gay" Indian homosexuals Start to Come out of the Closet" - cover story by Punam Thakur et al
- 1992 Aug 16-22   *Sunday*. "Homosexual or Heterosexual? AIDS in India a Gay Problem or a Straight One?" - by Punam Thakur
- 1992 Aug 16       *The Pioneer*. "Not Really a Gay Experience" - Amit Prakash writes of the homophobic reactions among the urban liberal elite to an article covering the CP park police attacks on gays.
- 1992 Aug 26       *The Pioneer*. "Challenging the Conventional View of Female sexuality" - the Delhi Group of lesbian women makes a lesbian feminist statement.
- 1992 Sep 8        *Femina*. "Gay is a Sad word: should Indian women come out of the closet?"
- 1992 Oct 3        *The Telegraph Weekend*, Calcutta. "Breaking barriers", by Anjali
- 1992 Oct           *Indian Express* profiles gay painter Bhupen Khakkar
- 1992 Nov           *The Pioneer on Sunday*. "Asian Homosexuals no Longer in the Closet".
- 1992 Nov 13       *The Pioneer*. "Gays Lose Cool at AIDS meet" - gay activists and HIV/AIDS activists protest over homophobia at the 2<sup>nd</sup> International Conference on AIDS in Asia and the Pacific.
- 1993 Jan           *Network*. "I'm a Lesbian - So What?" - Sangeeta Jain interviews three women who love women from Sakhi, Delhi.
- 1993 Jan 10       *Miscellany, The Sunday Statesman Review*. "The Angry Young Men and Women" 200 gay men, lesbians and supporters walked out of the International AIDS Conference in protest of homophobia and discrimination against gay men They regrouped and held parallel conference at Nehru Gardens.
- 1993 Apr 18       *Miscellany, The Sunday Statesman Review*, Calcutta. "Sad to be gay" - a report on the gay scenario in Calcutta by Soumitra Das

- 1993 May 27 *News Today*. "Gay Couple Stab Each Other" - an 18 year old boy and his friend got married in 1991 and were living as "husband and wife" in Thrissur. They committed suicide because of the non-recognition of their marriage by society.
- 1993 June 16-29 *Business World*. "Not Gay Times Yet" - Nonita Kabra finds no discrimination in the corporate world at the highest levels if homosexuals are "discreet".
- 1993 Jul 21 *The Pioneer*. "Meeru and Meenu's story" - two women who met, married and are living together in Faridabad.
- 1993 Jul 28 *The Telegraph*, Calcutta. "Jumping out of the Closet into the Fire" - a look at the situation of lesbians in India by Sheela Reddy.
- 1993 Sept 13 *Indian Express*. "I'm Goutam's wife, swore Ahmed - Homosexuals Proliferate in Ahmedabad".
- 1993 Nov 13 *Mid-day*. "Bombay Dost Gets Company" - about the formation of Pride Publications Inc.
- 1993 Nov 28 *Sunday*. "Indian Gays out of the Closet" - magazine cover story by Stanley Thomas.
- 1994 Jan 15 *India Today*. "Invoking History in Support - Gays Advocate Non-penetrative Sex to Combat AIDS" - report on the Conference on the History of Alternate Sexualities in India held in Delhi.
- 1994 Jan 18 *Amrita Bazar Patrika*, Calcutta. "Out of the closet" - an interview with some members of Counsel Club by Purnima Dutta.
- 1994 Feb 10, Feb 21, Mar 27, & Apr 2 *The Pioneer*. - coverage of statements made by Ms. Kiran Bedi, I.G. Prisons opposing condoms for prisoners in Tihar jail and claiming "Homosexuality is not rampant in prisons".
- 1994 Apr 28 *Mid-day*. "A Centre in Aid of Gays" - about the opening of the Humsafar Trust.
- 1994 Jun 15 *The Telegraph*, Calcutta. "How can the State Decree Bed-fellows?" - article by Soumitra Das focusing on the Kiran Bedi - Tihar Jail controversy and ABVA's petition for the repeal of Section 377, IPC.
- 1994 July 3 *Miscellany, The Sunday Statesman Review*. "Emerging from the Shadows" by Parvez Sharma - on the emergent lesbian and gay movement.

- 1994 Nov 1      *The Pioneer*. "PM Asked to Stop Gay Men's Meet" - Vimla Farooqui of the National Federation of Indian Women claims homosexuality in India is a result of decadent western influences.
- 1994 Nov 15, 18 *The Pioneer*. Letters to the editor from Samir Seth, and *Sakhi* protesting Vimla Farooqui's statement.
- 1994 Nov 20      *The Pioneer on Sunday*. "Recognise us, say Lesbians" and "Old Myths still Persist" - Rachna Subramanian reports on *Sakhi* and the Delhi lesbian scene.
- 1994 Dec 25      *The Asian Age*. "International Meet on Gays from December 27" - a preview of the Humsafar-Naz Conference in Bombay by Mini Pant Zachariah
- 1995 Jan 1      *Sunday Mid-day*, Bombay. "A Time to Heal" by Manjula Narayan.
- 1995 Jan 2      *The Times of India*, Bombay. "Plea to Decriminalize Homosexuality".
- 1995 Jan 8 - 14   *Sunday Observer*, Bombay. "Gay Conference seeks Legal Sanction for Homosexuality" by Suchananda Gupta.
- 1995 Jan 14      *Matrubhoomi* (Daily newspaper in Malayalam). - the girls, Gita (22) and Saija (16) decided to elope and later committed suicide.
- 1995 Jun      *Savvy*. "Gay Sarah" - a profile of Sarah, an Anglo-Indian lesbian.
- 1995 Jun 21      *The Asian Age*, Calcutta "A Story of Two Teenaged Girls Whose Love for Each Other Made Them Disappear" - a lesbian couple in Delhi elopes. By Suparna Sharma.
- 1995 Jul 2      *Sunday Mid-day*, Bombay, also *The Telegraph*, Calcutta. - a report on the love affair of Raju and Jitendra, a young male couple running a vegetable shop in Jamshedpur. The story talks about the tribulations they went through when their relationship came to light. When Jitendra was driven out by his parents, Raju also left home to join him. Author: Shrikant Rao.
- 1995 Jul 22      *The Asian Age*, Calcutta. "Pravartak, first City Gay Magazine, Hits Stands" by Parnab Mukherjee.
- 1995 Aug 8      *The Bombay Times (Times of India)*. "Another Tutor, Student 'Scandal' " Parul and Mehernaaz ran away from their respective homes and spent

- 10 months roaming around the country. A case of kidnapping was filed against Mehernaaz by Parul's father
- 1995 Aug 20 *Times of India*. "Women who Love Women" - Bachu Karkaria's column features an interview with three women from Stree Sangam
- 1995 Aug 20 *Indian Express*. "U.S Indian Body Refuses to March with Homosexuals" - the Federation of Indian Associations prohibits South Asian Lesbian and Gay Association (SALGA) from marching in its India Day parade in Washington D.C
- 1995 Aug 28 *Anandabazar Patrika*, (Bengali daily) Calcutta. "Shamakamider patrika ekhun prokashey bikri kora hochchey" (A Gay Magazine is now being sold in the open) by Supratim Sarkar.
- 1995 Oct 25 *Outlook* "Alternate Leanings" - a profile of Giti Thadani of Sakhi, New Delhi, and the struggle for lesbian visibility in India.
- 1995 Dec 24 *The Statesman - Impressions*, Calcutta. "Coming Out of Purdah" - a profile of Counsel Club and Pravartak by J.P. Yadav.
- 1996 Jan 28 *The Telegraph*, Calcutta. "Bold, Brilliant and Proud to be Gay" - Seema Sirohi profiles Urvashi Vaid, U.S based Indian lesbian activist.
- 1996 Feb 2 *Bombay Times, Times of India*. "When I'm in Drag" - cross-dressers Dolly Daruwalla and others talk to Rajiv Masand about their lives and experiences.
- 1996 Feb 15, Mar 7, Mar 28 & Apr 18 *The Statesman - Voices*, Calcutta. - features an interactive sex-education column for young people produced by Thoughtshop Foundation, with Counsel Club as a resource group for questions related to homosexuality.
- 1996 Mar 17 *Times of India*. "Centre Helps Gays Tackle Health Problems"
- 1996 Mar 22 *Hindusthan Times* (New Delhi). "Elephantine Problems of the Invisible - Humsafar Trust reaches out to Mumbai gays through voice mail".
- 1996 Apr 3 *The Asian Age*, Calcutta. "Vote for Ghagra: Kali courts Patna with a song"- a report by Naved Zahir on Kali, who becomes the first eunuch to stand for elections in Bihar as a candidate of the Judicial Reforms Party.

- 1996 Apr 17 *Outlook*. "Room With a View - the gay Community wins Official Acceptance and a Space" - Humsafar Trust obtains a centre in BMC quarters.
- 1996 May 15 *India Today*. "Gay in the East" - a profile of Naya Pravartak by Ruben Bannerjee.
- 1996 Dec 11 *Outlook*. "Soliciting a Killer Disease" - Soma Wadhwa highlights the situation faced by males who sell sex, and how NGOs are working with them on sexual health issues
- 1996 Dec 31 *Bombay Times, Times of India*. "God Spare the Queen" - Rajiv Masand covers the drag queen beauty contest and festivities at the gay community New Years Eve party in Andheri, Mumbai
- 1997 Sep 14 *Times of India* (Bangalore) "City hosts Unique Meet on Gay Rights" - reports of the Seminar on Gay Rights organised by the students of the National Law School, Bangalore.
- 1997 Sep 14 *Deccan Herald* (Bangalore) "Homosexuality Should not be Closeted" reports of the National Law School seminar.
- 1997 Sep 18 *Deccan Herald* (Bangalore) editorial - "Need for Openness" - report of the National Law School seminar
- 1997 Oct 6 *Outlook*. "Out of the Shadows" - Soutik Biswas reports on how male sex workers are organising themselves, joining hands with female sex workers in bodies such as the Durbar Mahila Samanvaya Committee, etc
- 1998 Jan 10 *The Sunday Times of India*, Patna. "Unfriendly Law" - Frank Krishner profiles Section 377, IPC and the signature campaign initiated for its repeal
- 1998 Mar 23 *India Today*. "Out of the Shadows - Eunuch Councillors Fight Mindsets to Forge New Identity and Gain Social Acceptance" - report by Ramesh Vinayak about eunuch municipal councillors elected in Punjab, Haryana and Rajasthan.
- 1998 Apr 20 *Times of India*. "Girls Tie the Knot to Turn Man and Wife" - Sanjay Jha reports that Simmi and Sweta, classmates and good friends aged 22,

filed a petition with the notary of the Patna civil court claiming they were wedded. Three witnesses signed the legal affidavit in support of the duo.

1998 May 12     *The Telegraph*, Calcutta. "Straight is the Gait" Rimi Chatterjee reviews *Coming Out with Music*, a music and dance performance entirely on gay themes.

1998 May 17-23     *Sunday*. "Women in Love: Indian Lesbians Talk About Themselves." - Chitralekha Dhamjia does a cover story on lesbians.

1998 June 24     *The Telegraph*, Calcutta. "Veering From the Straight and Narrow" - Sherry Joseph outlines the recent campaign to repeal Section 377.

Date unknown Mar 21     *Indian Express* : two young women - Vinodha Adkewar (18) and Rekha Choudhary (21) approached the Registrar of Marriages in Chandrapur in order to get married.

Date unknown     *The Tribune*, Chandigarh in an article "Woman weds 'Woman'" reported the story of Neeru alias Dinesh Sharma and Meenu who married and were living together in Faridabad.

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‘promote homosexuality’, or teach ‘acceptability of homosexuality as a pretended family relationship’ in schools.”

In practice, this has meant discrimination against lesbians and gays in employment in educational or health services by the State.

#### Cases of discrimination that have come to public attention in India

1. *Leela Shrivastav and Urmila Namdeo* In February 1988, national dailies carried the highly sensationalised story of Leela and Urmila, two women constables of the Madhya Pradesh Special Armed Force who had been discharged from service because they were reported in the press as having married each other. The ostensible grounds for discharge were “Unauthorised absence” and, “Conduct unbecoming of Public Servants”. The State is the largest employer and none of the service rules define homosexuality as an act of misconduct. Clearly, the constitutional prohibition of discrimination and guarantee of equality of opportunity in employment do not hold in the case of lesbian women.
2. In January 1992, seven school-girls from Class nine and ten were expelled from a government high school in Thiruvananthapuram, Kerala for being a “lesbian grouping.” The majority of the opinions expressed by the adults considered their behaviour as, “abnormal” or a “passing, adolescent phase.” Few, if any, asserted anything to the contrary, or protested their expulsion.

#### 4. Domestic Partnership Rights

The marriage of Leela and Urmila in Bhopal was the first in a series of several women to women marriages that have come to public / media attention in recent years:

- May 7, 1988: *Indian Express* (Bangalore edition) carried a brief story of Asaruna Gohil (31) and Sudha Amarsingh (29), employed in a panchayat school at Vadadhali village, Naswadi taluka (Gujarat) - who wanted to continue living together. The two women signed a statement at the district court in the presence of a notary and entered into a friendship contract called “Maitri Karar” in Gujarati.
- March 21, (Year unknown): *Indian Express* reported the story of two young women Vinodha Adkewar (18) and Rekha Choudhary (21) who approached the Registrar of Marriages in Chandrapur in order to get married. The two women were from the villages Patri and Dadgaon and had met each other during a family gathering almost 4 years previously. Their relationship grew, despite the distance between their homes, ending in their resolve to marry. Initially, Khadse, the registrar told

## Films



*My Beautiful Launderette*. Dir. Hanif Kureishi, United Kingdom, 1985. A feature film showing the complex relationship between two young men in the U.K., one of whom is of Pakistani origin.

*Destiny, Desire, Devotion*. Dir. Zahid Darr, United Kingdom.

*Flesh and Paper*. Dir. Pratibha Parmar. A profile of lesbian poet Sunni Namjoshi.

*Double the Trouble, Twice the Fun*. Dir. Pratibha Parmar.

*Khush*. Dir. Pratibha Parmar, 1991. South Asian lesbian's and gays.

*Gay Bombay*.

*Veeru Dada*. Dir. K R Reddy, Prod. Ram Babu

*Bolo! Bolo!* Produced by Ian Rashid and Gita Saxena. 1997. On AIDS in the South Asian Community in the U.S.

*BOMGAY*. Dir. Riyad Vinci Wadia, Bombay, 1996. 11-minute series of 6 short films based on the poetry of R.Raja Rao.

*A Mermaid called AIDA*. Dir. Riyad Vinci Wadia, Bombay, 1996. 50 min.

*Tamanna*. Dir. Paresh Rawal, Bombay, 1997.

*Fire*. Dir. Deepa Mehta, 1997. A feature film depicting a lesbian relationship in a middle class Delhi family.

*Dayra*. Dir. Amol Palekar, 1997.

*Darmiyaan*. Dir. Kalpana Lajmi, 1997



## Theatre & Dance

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*Kiss of the Spiderwoman*. (Hindi adaptation from the novel of the same name by Manuel Puig)

Dir Rustam Bharucha, New Delhi, 1993.

*Varun*. Play written by members of **Arambh**. Dir. Barry John, Delhi 1993

*O Come Bulky Stomach*. Shantanu Nagpal, Dir. Barry John, Theatre Action Group, New Delhi, 1994

*Happy Birthday* (Marathi). Dir. Satish Pulekar, Script Suni Khanolkar, 1994.

*Jameelabai Kalali*. (Hindi adaptation of Mario Verga Llosa's "La Chunga"). Dir K.K Raina, Surnali Theatre Group; 1994

*Inside Gayland*. Rajesh Talwar, Delhi, 1995.

*The Alien Flower*. Sapphire Creations Dance Workshop, Calcutta, 1996

*Behind the Scenes*. Sarani, Calcutta, 1998.

*Coming Out with Music*. Sarani, Calcutta, 1998.





# Information Resources

- ☞ Select Bibliography
- ☞ Journals and Magazines
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## SELECT BIBLIOGRAPHY

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**A**t the turn of the century, the literature (both popular and serious) on gay, lesbian and bisexual issues is quite vast, and diverse. Although there are gay, lesbian and bisexual documentation centres, archives, and bookshops; we have not come across an authoritative, comprehensive bibliography in print. This select bibliography certainly does not aim to fill that gap. Rather, the aim is firstly, to document the articles, booklets and books (in English) in the Indian/ South Asian context. The magazines *Trikone* and *Bombay Dost* are also good sources for some quality reading in this context. The second aim of this bibliography has been to provide references to documents and books on legal issues; as well as history, theory and politics - to give a glimpse into the range of offerings available in the larger context.

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them that he would check and see if it was legally possible. However, later, when public attention was drawn to the case, he and the District Superintendent of Police dissuaded the women from even living together.

Date unknown: *The Tribune*, Chandigarh in an article "Woman weds 'woman'" reported the story of Neeru alias Dinesh Sharma and Meenu who married and were living together in Faridabad. They were married on July 9th, in a temple in the presence of friends of both the women. They had met at a *jagrata* and started meeting regularly. "I know society will not accept this marriage, but despite all odds, we have decided to live together," said Neeru, who is aware of the marriage of Leela and Urmila in Bhopal.

#### Legislation in other countries

- 1988 Sweden introduced legislation limited to inheritance and common property rights
- 1989 Denmark introduced similar legislation
- 1993 Norwegian Act on Registered Partnerships for Homosexual couples was enacted.
- 1994 The Netherlands has local government acts allowing registry, but no national laws
- 1993 Several cities and states in the US (Sao Paulo, San Francisco) have Domestic Partnership legislation

*These are all "small town" women, with little or no access to "Western" influences, trapped in circumstances that force them to conform to compulsory heterosexuality - even if it means undergoing a sex change. These women have mostly limited access to the resources necessary to enable them to live independently, or even access the city-based lesbian and gay support group networks. Despite this, they have the courage to publicly assert their determination to live and love together. The economic and social vulnerability of such women makes the legal and social acceptance of their relationship vital.*

Beyond social recognition is the need for the legal rights that accrue to two people in marriage. Lesbian and gay families today do not have even recognition, let alone the rights that are taken for granted in heterosexual couples. Thus we feel that any discussion of family laws should include the rights of lesbians and gays to form families of their own choosing, and to be accepted as such, with all the rights and privileges that come from such an acceptance. Some of the rights and privileges that would put lesbian and gay relationships on par with heterosexual ones include,

1. The regulation of legal and financial rights and obligations
  - \* Maintenance liability in the event of termination of partnership or death

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## JOURNALS & PUBLICATIONS

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(LBG) - Lesbian, Bisexual & Gay (G) - Gay only (L) - Lesbian only (S) Support

### Indian & South / Asian

#### **Bombay Dost (LG)**

105, Vena Beena Shopping Ctr.  
Bandra(West)  
Mumbai, Maharashtra  
India

#### **Breakout (LB)**

CLIC (Can't Live in the Closet)  
P.O. Box 2356, Central Post Office  
QC 1102, Philippines  
Email: clic@phil.gn.apc.org

#### **Darpan (LBG)**

P.O. Box 3910, Andrews Gunj  
New Delhi 110 049  
India

#### **Gaya Nusantara (LBG)**

Jalan Mulyosar Timur 46  
Surabaya 60112, East Java  
Indonesia

#### **Khush Khayal (LG)**

P.O. Box 6172  
Station A, Toronto, Ontario  
Canada M5W 1P6

#### **Naya Pravartak (LBG)**

c/o Ranjan, Post Bag No. 794  
Calcutta, West Bengal -700 019  
India

#### **Naz Ki Pukar (LBG)**

P.O. Box 3910, Andrews Gunj  
New Delhi 110 049  
India

#### **Sacred Love (G)**

Post Box MP/366, G.P.O  
Lucknow 226 001  
India

#### **Sami Yoni (L)**

P.O.Box 891, Station "P"  
Toronto, Ontario  
Canada M5Z2S2

#### **Sangha-Mitra (LBG)**

Post Box 7625  
Bangalore 560 076  
India

#### **Scripts (LB)**

P.O. Box 16613  
Matunga, Mumbai 400 019  
India

#### **Shakti Awaaz (LG)**

P.O. Box 93  
28A Seymour Place  
London, W1H 5WJ  
U.K.

**Shamakami (L)**  
P.O. Box 460456  
San Francisco  
California  
U.S.A. 94146

**South-Pacific Pearl (G)**  
(Published by Asians & Friends)  
P.O. Box No. 238  
Darlinghurst  
New South Wales 2010  
Australia

### **International Publications**

**Emergency Response Network (LG)**  
(Publication of International Gay & Lesbian  
Human Rights Commission)  
1360 Mission Street, Suite 200  
San Francisco, California  
U.S.A. 94103

**GLPCI - Network (S)**  
(Publication of Gay & Lesbian Parents  
Coalition International)  
P.O. Box 34337  
San Diego, CA - 92163  
U.S.A.  
e-mail - crdrew@aol.com

**Paz y Liberacion**  
P.O. Box 66450  
Houston, Texas  
U.S.A. 77266

**Lesbian Connection (L)**  
**Ambitious Amazons**  
P.O. Box 811, East Lansing  
Michigan  
U.S.A. 48826

**Timeshare (BG)**  
c/o Aasra  
Post Box 68, G.P.O.  
Patna 800 001  
India

**Trikone Magazine (LBG)**  
P.O. Box 21354  
San Jose, California  
U.S.A. 95151 1354

**Girlfriends (LB)**  
P.O. Box 713  
Half Moon Bay, California  
U.S.A. 94019

**Lesbians on the Loose (LB)**  
P.O. Box 798  
New Town, Australia 2042

**Perversions (LG)**  
The International Journal of Gay and Lesbian  
Studies  
BM Perversions  
London WCIN3XX  
U.K.

**Bad Attitude (L)**  
121, Railton Road  
London  
U.K. SE24 OLR



## WEBSITES



Since the information technology revolution of the past two decades, gay, lesbian, bisexual and transgender users of the Internet are quite possibly the largest constituency in cyber world. Of course, as with the Net in general, the majority of the users are in the U.S. and Europe - though we have a few cyber surprises from South Asia too, so read on

To tempt you with just a hint of the variety - sites range from the **Official k.d. lang Fan Club** (<http://www.infohouse.com/obviousgossip/>), to sites for gay cyber Christians like *Whosoever: A News Journal for Gay and Lesbian Christians* (<http://www.mindspring.com/~sagecomm/whosoever/>) and sports sites like **Gay and Lesbian Windsurfers** (<http://members.aol.com/glwindsurf/windsurf.html>). There are even exclusive "gay cyber communities" such as *Geocities' West Hollywood* (<http://www.geocities.com/WestHollywood/>) - where many lesbians, gays, bisexuals and transgendered people have availed of *Geocities'* free web page facility

A handy reference guide and start-up for the uninitiated is the book *Out's Gay and Lesbian Guide to the Web* by J. Harrison Fitch<sup>1</sup> (the book comes with a CD) Indeed, many of the Websites cited here were referenced based on this guide. It is important to remember two things though, before you get online - first, that changes occur very rapidly in cyber world. Second, not all sites are regularly updated.

### Search Engines

While it is possible to use common search engines like *Yahoo* (<http://www.yahoo.com>), *Altavista* (<http://www.altavista.com>), and *Lycos* (<http://www.lycos.com>) - there are also gay search engines which have the obvious advantage of more gay-friendly classification systems, plus a lot of links to gay, lesbian, bisexual and transgender sites. For the more sophisticated net user, a search tool with all the major search tools on one page is *The DivaNet Search Page* (<http://www.divanet.com/search/>)

#### *Rainbow Query*

<http://www.rainbowquery.com>

With 200 subject categories, this claims to be the largest, most complete "gay only" index on the Internet, with powerful search capabilities.

*GaySeek.com*

<http://freedom.co.uk/>

This is a U.K. based search engine that is currently undergoing a facelift.

*Gayscape*

<http://www.gayscape.com/gayscape/gs.html>

A search engine that claims to have indexed 52,000 sites

*PrideLinks*

<http://www.pridelinks.com/index.html>

A bright new search tool with 7,000 links to resources.

## Meta Sites and Hyper links

These are sites that either host other smaller sites, or provide links to them. There are the big institutions like *PlanetOut* and the *Queer Resources Directory* - but there are also innumerable individuals who have made homepages with links to useful (and their favourite) sites. A sampling of such meta-sites is included here

*PlanetOut*

<http://www.planetout.com>

A snazzy, image laden site that houses *PopcornQ* (gay and lesbian film and video), the *Queer Resources Directory*, chat rooms, bulletin boards, gay radio, and much, much more to explore

*Queer Resources Directory*

<http://www.qrd.org/qrd/>

A huge electronic library of information on lesbian, gay, bisexual and transgender issues ranging from coming out, family, media, business, legal and workplace issues. It will soon be housed exclusively on the *PlanetOut* server (so the above address may become redundant). Of interest is the section on *Queer Legal Resources*.

*InfoQueer*

<http://www.infoqueer.org/queer/qis/>

This site lists lesbian and gay cyber resources by subject area and geographic area

*Lesbian Organisations*

<http://www.lesbian.org/>

An excellent, and the oldest collection of lesbian specific information and links on the Net.

*Rainbow Links*

<http://www.cris.com/~rnbwlink/>

An advertisement based service, good for special interest references.

*Queer Ring*

[http://www2.dk-online.dk/users/christ\\_h/qrmenu.html](http://www2.dk-online.dk/users/christ_h/qrmenu.html)

This is a "cyber ring" concept in which a chain of lesbian, gay, bisexual and transgender sites are linked to each other; interconnecting the on-line queer community. Good for timepass browsing.

*Planet Q*

<http://www.planetq.com>

Of note in this site are the AIDS Virtual Library, and an International Events Calendar.

*Best of the Internet for Gays and Lesbians*

<http://www.cyber-designs.com/pride/>

*Gay/Lesbian Links*

[http://www.inet.uni\\_c.dk/~steff/gaylinks.htm](http://www.inet.uni_c.dk/~steff/gaylinks.htm)

A home page with good links for news, and political organising.

*Gay and Lesbian Information*

<http://www.ping.be/~ping1678/gay/>

*Gay and Lesbian Resources*

<http://www.3wnet.com/reference/gnl.html>

*The Homosexual Agenda*

<http://www.tatertot.com/agenda/>

This site contains an index good for browsing, and is regularly updated.

*LesBiGay & Queer Resources @igc*

<http://soho.ios.com/~ski4ever>

This site links to subjects such as Domestic Partner and Family Issues, Media Resources, International Gay and Lesbian Rights Groups.

*Sappho Central*

<http://ourworld.compuserve.com/homepages/sappho/>

This site connects to lesbian and women oriented sites.

*Yahoo! (Society and Culture: Lesbians Gays and Bisexuals)*

[http://www.yahoo.com/society\\_and\\_culture/sex/gay\\_lesbian\\_and\\_bisexual\\_resources/index.html](http://www.yahoo.com/society_and_culture/sex/gay_lesbian_and_bisexual_resources/index.html)

Yahoo! has several hundred links with updated coverage

## South-Asian Sites

*Humrahi: Forum for Gays at New Delhi*

<http://www.geocities.com/WestHollywood/Heights/7258>

At last, a “desi” site! Carries the publication *Darpan*.

*Khukh Zabun*

<http://www.geocities.com/WestHollywood/9993/index.html>

Chicago based lesbian and bisexual women’s group found a cyber home at Geocities. Site is still under construction.

*Khush - Toronto*

<http://www.interlog.com/~khush/contents.html>

Queer South Asian group. Contains Great People Web link

*Sangat*

<http://members.aol.com/youngal/sangat.html>

Chicago based group’s site with good links to other South /Asian lesbian and gay sites.

*Samahnga*

<http://www.geocities.com/WestHollywood/5838/>

This site contains select postings from the Khush list.

*Trikone*

<http://www.trikone.org>

Houses highlights from the magazine *Trikone*, information about the organisation and its activities, community resources and the *Khush* mailing list. To join the mailing list, send email to [trikone@rahul.net](mailto:trikone@rahul.net)

*Trikone Atlanta*

<http://www.mindspring.com/~trikat/>

Contains the *South Asian Queer Resources Directory* with a listing (a bit outdated) of groups and publications.

## Legal Information Sites

*GayLawNet*

<http://www.labyrinth.net.au/~dba/index.html>

This site based in Australia offers exhaustive information and links on the legal issues “down under” - including censorship, taxation, arrest by police, taxation etc. Of note is *GayLawNews* in the site.

- \* Joint taxation
  - \* Joint insurance
  - \* Social benefits - old age pension, single parent benefits
  - \* Debt, mortgage loans
  - \* Common property, inheritance
2. "Next of kin" privileges in the event of terminal illness / accident or death
  - 3 Regulation of the rights and care of children
    - \* Custody and maintenance
    - \* Adoption
    - \* Artificial insemination
    - \* Child support from the State
  - 4 Immigration rights for bi-national couples This is already available in some countries such as Australia (where a non-related significant other can immigrate), Norway (both partners need to be resident, one a national), New Zealand, Canada, and the Netherlands.

In Europe, registration of domestic partnerships is viewed from an economic angle, which benefits rich couples, and not poor couples, since the former gets tax benefits, and the latter lose State benefits provided to single people, if they were to register a domestic partnership. "Marriage" as a religious institution is still sacrosanct. It is the "contract", i.e. the economic, social and legal regulation of domestic affairs, which is accepted, while adoption, child custody and artificial insemination rights are still denied to lesbian and gay couples.

In addressing the issue of rights for lesbian and gay couples, there are two possible routes to enacting the legislation. In the first, the legislation enacted is the same as that for heterosexual couples and in the second, the legislation for lesbians and gays is separate from that for heterosexual couples.

In practice, in most countries, the latter route has been adopted - and this has primarily been to assign certain economic and legal rights/ benefits of heterosexual marriage contracts to homosexual unions. However, even in the most "progressive" countries, these rights are not fully equal to those enjoyed by heterosexual couples.

## Gender Justice

True gender justice means not only laws for women and men in hetero relations but justice that recognises and gives rights to all people not within this paradigm. These include not just lesbians and gays, but also other marginalised peoples - transgenders, transsexuals,

*Lesbian and Gay Law Notes*

<http://qrd.rdrop.com/qrd/www/usa/legal/lglw/>

A site hosted by QRD (Queer Resources Directory), it contains reports and analytical articles on legal updates - mostly in the U.S, with the occasional coverage of other countries.

*National Journal of Sexual Orientation Law*

<http://sunsite.unc.edu/gaylaw/>

Good for research in gay issues, this site journal be subscribed to by emailing the editor Mary Sylla at [mmsylla@gibbs.oit.unc.edu](mailto:mmsylla@gibbs.oit.unc.edu)

*Queer Legal Resources*

<http://www.qrd.org/qrd/www/legal/>

Page within the QRD, this site has links to legal documents, case listings etc

***Legal status of lesbian, gay, bisexual & transgendered people internationally***

*International Law*

<http://www.qrd.org/qrd/www/legal/>

Hosted by QRD, this site contains information on sodomy laws, AIDS, immigration and marriage rights in other countries.

***Workplace Legal Issues***

*Human Rights Campaign WorkNet*

<http://www.hrcusa.org/issues/workplac/index.html>

This site contains comprehensive coverage of all aspects of lesbian and gay workplace issues in the U.S. - including discrimination, same-sex partner benefits, lists of companies that have gay-friendly policies, etc.

***Rights to Immigration***

*Queer Immigration*

<http://qrd.tcp.com/qrd/www/world/immigration/>

Hosted by QRD, this site has information on asylum and immigration law, rulings and contacts for queer immigration groups.

*Gay and Lesbian Immigration Task Force, Australia*

<http://www.glitf.org.au>

*Lesbian and Gay Immigration Rights Task Force, USA*

<http://www.lgirtf.org/>

<http://qrd.tcp.com/qrd/www/world/immigration/lgirtf.html>

*Frequently Asked Questions on Gay and Lesbian Rights in the Netherlands*

<http://www.xs4all.nl/~heimv/dqrd/dqrd/dqrdfaq.html>

***Right to Marry***

The *Baehr v. Lewin* case in Hawaii prompted intensive Internet mobilisation in campaigns for the right to same sex marriages in the U.S. Many sites were created at this time carrying news, articles, debates, educational material, legal texts, etc. Organisations such as Lambda Legal Defence and Education Project, the National Gay and Lesbian Task Force, the Human Rights Campaign (USA), NOW (National Organisation for Women), among others also included Marriage Rights pages in their web sites.

*Equal Marriage rights Home Page*

<http://nether.net/~rod/html/sub/marriage.html>

*Forum on the Right to Marriage*

<http://www.calico-company.com/formboston/>

*Freedom to marry*

<http://www/ftm.org/>

*Hawaii Equal Rights Marriage Project*

<http://www.xq.com/hermp/>

*Partners Task Force for Gay and Lesbian Couples*

<http://www.buddybuddy.com/toc.html>

**Organisation sites***International Gay and Lesbian Human Rights Commission*

<http://www.iglhrc.org/>

The IGLHRC site contains press releases, action alerts, a newsletter and more.

*International Lesbian and Gay Association*

<http://www.seta.fi/inat/ilga.html>

Contains a bi monthly bulletin and information on the Brussels based organisation.

*Amazon Online*

<http://www.amazon.org/amzonline/amzonl.shtml>

This site contains information and links for lesbian and bisexual women.

*The Isle of Lesbos*

<http://www.sappho.com>

This site has sections on poetry and art for lesbian and bisexual women.

## Asian Sites

### *Gay Asian Literature*

<http://www.geocities.com/WestHollywood/3821/>

Primarily contains a listing of books.

### *Keanoo's Gay Asian Links*

<http://www.geocities.com/Tokyo/4550/gay.htm>

A site that points to Asian internet sites of interest to gay Asians and friends.

### *Utopia, Southeast Asia Gay and Lesbian Resources*

<http://www.utopia-asia.com/>

### *Queer Muslims Home Page*

<http://www.angelfire.com/ca2/queermuslims/index.html>

## Literary Sites

### *Lesbian Poetry*

<http://www.sappho.com.poetry/>

A collection of lesbian poetry through the ages from Sappho to Gertrude Stein, including lesser known poets.

### *Sapphic Ink*

<http://www.lesbian.org/sapphic-ink/>

An on-line lesbian literary journal with poetry, short fiction, and book reviews.

## Archives

### *Hall Carpenter Archives*

<http://www.lse.ac.uk/blpes/archives/hallpag.htm>

An excellent source for the study of gay activism in Britain since the 1960's.

### *June Mazer Lesbian Collection*

<http://www.lesbian.org/mazer/index.html>

A site containing material by and about lesbians of all classes, races, ethnicities and experiences in the U.S.

### *Homodok*

<http://www.>

A lesbian and gay library in Amsterdam with exhaustive references to books and articles published.



*Lesbian Herstory Archives*

<http://www.datalounge.net/network/pages/lha>

*New York Public Library Gay and Lesbian Studies*

<http://www.nypl.org/research/chss/grd/resguides/gat.html>

This site contains a collection of materials on gay and lesbian lives since 1911, including an index to the collection.

*ONE Institute International Gay and Lesbian Archives (ONE/IGLA)*

<http://www.usc.edu/library/oneigla/>

This is the largest research library on gay, lesbian, bisexual and transgender concerns. The *International Gay and Lesbian Review* is a journal providing abstracts and reviews of queer studies books.

## Bookstores

Many bookstores have now gone on-line and it is possible to browse through “book shelves” and even order new and second hand books at the following sites. Some of the sites also have chat rooms, videos and CDs, and art work.

*A Different Light Bookstore*

<http://www.adlbooks.com/>

*Ex Libris*

<http://www.clo.com/~exlibris/>

*Girlfriends Coffeehouse and Book store*

<http://www.bonzo.com/girlfriends/>

*Glad Day Bookshop*

<http://www.tiac.net/users/gladday/>

*Sisterspirit Bookstore*

<http://www.elf.net/sisterspirit/>

*Sapphisticate*

<http://www.sapphisticate.com/>

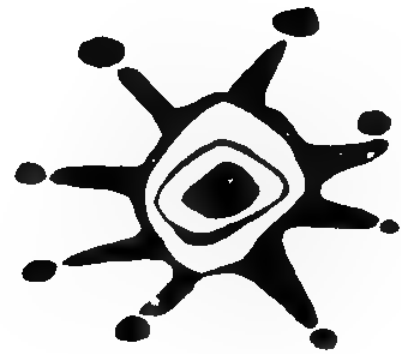
*Thunder Road Book Club*

[http://ourworld.compuserve.com/homepages/Thunder\\_Road\\_Book\\_Club/](http://ourworld.compuserve.com/homepages/Thunder_Road_Book_Club/)





# Networking Directory



Gay, Lesbian & Bisexual Organisations in India ❧  
South/Asian Gay, Lesbian & Bisexual Organisations ❧  
International Gay & Lesbian Organisations ❧  
Support Organisations: Indian and International ❧



# DIRECTORY

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## GAY, LESBIAN & BISEXUAL ORGANIZATIONS IN INDIA

(LGB) = Lesbian, Gay & Bisexual (L) = Lesbian only

(G) = Gay only (NI) = No information

### **Aasra (BG)**

P.O. Box 68

G.P.O. Patna

Bihar 800 001

### **Arambh (LBG)**

P.O. Box 9522

New Delhi 110095

### **Counsel Club (LBG)**

c/o Ranjan

P.B. 794

Calcutta 700 017

### **Expression (G)**

P.O. Box 68, G.P.O.

Bolaram Post Office

Secunderabad

Andhra Pradesh 500 010

### **Good As You (LG)**

c/o Samraksha

Ranka Apartments, Double Road

Near Richmond Circle

Bangalore

Email: [goodasyou@hotmail.com](mailto:goodasyou@hotmail.com)

### **Humrahi (LBG)**

P.O. Box 3910, Andrews Gunj

New Delhi 110 049

Ph: 91 (11) 685 1970/ 71

(*Humrahi (for men) tele-counselling services: Mondays and Thursdays, 7-9 p.m.*

*Support group meetings: Saturdays, 6:30-9 p.m.)*

### **Humsafar Centre (LG)**

P.B. No.6913, Santa Cruz (W)

Bombay 400 054

Voice Mail 91 (22) 972-6913

### **Friends India (G)**

Post Box - 59

Mahanagar, Lucknow

Uttar Pradesh 226 006

### **Men India Movement (G)**

c/o Nikhil

Post Box 885, Cochin

Kerala 682 005

**Saathi** Hyderabad chapter (BG )

Post Box No. 571

Putlibowli PO

Hyderabad

Andhra Pradesh

**Saathi** - Cuttack chapter (BG)

PO Box 512

Chandni Chowk

H.P.O. Cuttack

Orissa 753 002

**Sahayak Gay Group** (G)

c/o Naresh Bhatti

Laxmi Narayan Sadhan

Prasad Colony, Jathar Peth

Akola

Maharashtra 444 004

**Sakhi** (I.)

P.O. Box 3526

Lajpat Nagar

New Delhi 110 024

**Sangini** (LB)

P.O. Box 3910, Andrews Gunj

New Delhi 110 049

Ph 91 (11) 685-1970/ 71

e mail. sangini@hotmail.com

(Tele-counselling services: Tuesdays, 6-8 p.m.

Support group meetings: Saturday 3-5.30 p.m.)

**Sneha Sangama** (GB)

PO Box 3250, R.T Nagar

Bangalore

Karnataka, 560 032

**Stree Sangam** (I.)

Post Box No 16613

Matunga, Mumbai 400 019

**Women's Network** (L)

P.O. Box 142, G.P.O.

New Delhi 11001

## SOUTH / ASIAN GAY & LESBIAN ORGANIZATIONS

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(LBG) = Lesbian, Gay & Bisexual (L) = Lesbian only (G) = Gay only  
(NI) = No information

**Asians & Friends (G)**

PO Box No 238  
Darlinghurst  
New South Wales 2010  
Australia

**Asian Lesbian Network (L)**

PO Box 7760,  
Taipei  
Taiwan 106

**CLIC (Can't Live in the Closet) (LB)**

PO Box 2356  
Central Post Office  
QC 1102, Philippines  
Email: clic@phil.gn.apc.org

**Companions on a Journey (LBG)**

PO Box 48  
Wattala  
Sri Lanka

**Friendship Sri Lanka (LB)**

# 1049 Pannupitiya Road  
Battaramulla 10120  
Sri Lanka

**Gaya Nusantara (LBG,**

Jalan Mulyosari Timur 46  
Surabaya 60112  
East Java, Indonesia

**Hindustani Yaar (NI)**

PB. 1603, Potts Point  
New South Wales 2011  
Australia

**Khush Khayal (NI)**

PO Box 6172, Station A  
Toronto, Ontario  
Canada M5W 1P6

**MASALA (LG)**

PO Box 1182  
Cambridge, Massachusetts  
USA 02142

**Mastana**

c/o CDO  
Auckland University Students Association  
PB 92019, Taamaki Makau Rau  
Auckland 100, Aotearoa  
New Zealand

bisexuals and others. Only if people of all genders and their lived realities are reflected and recognised within law, and their human and family rights granted, only then can we have real and effective gender justice.

Keeping this in mind, *Forum Against Oppression of Women* (a group of which each one of us in the *Working Group* is a member) has included homo-relational realities as part of a vision of gender-just laws<sup>7</sup>. Homo relational families, a lived reality in the Indian context, have been recognised on par with hetero-relational families. The laws governing such contracts have, however, been kept somewhat different because as stated in the draft on gender just laws:

*"According to us although the status accorded to homosexual and heterosexual contracts has to be equal, the laws governing these cannot be the same because we presume an inequality in all hetero-relational realities. The terms of settlements and the rights of each individual in these realities are hence different from those of the persons in a homo-relational reality. Since gender is not the only factor that creates the power balance between two persons, these other differences are taken care of when referring to rights of the individuals in a homo-relational reality."*

In keeping with this the suggestions put forward about the rights of persons in a homo-relational partnership are as follows:

- Each partner has an equal right to the matrimonial home.
- Each person has the complete right over the property that they individually own at the time that the contract is made. Both partners have an equal share and jointly own all property that is subsequently acquired
- Each partner is responsible for the well being of the other with greater responsibility on the one who is earning to meet the material needs of the other.
- Both partners are guardians of the children jointly adopted and are responsible for their welfare.

Similarly, at the time of dispute / breakdown of the partnership the following suggestions have been made

- Either partner can ask for a divorce claiming irretrievable breakdown of the marriage. Such a divorce would get finalised six months after filing the petition.
- The property acquired during the relationship would be divided equally.

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<sup>7</sup> Forum Against Oppression of Women "Visions of Gender Just Realities", Bombay: December 1995



**Of Colour (NI)**

c/o Gay Lines Calgary  
201-223 12th avenue SW  
Calgary, Alberta  
Canada T2R0G9

**SALGA (LG)**

P.O. Box 50, Cooper Station  
New York, New York  
USA 10276-0050

**SALGA - Philadelphia (LG)**

c/o Action AIDS  
1216 Arch St., 4th Fl.,  
Philadelphia, Pennsylvania  
USA 19107

**Sangat (NI)**

Box 268463  
Chicago, Illinois  
USA 60626

**Sami Yoni (I)**

P.O.Box 891, Station "P"  
Toronto, Ontario  
Canada M5S2Z2

**SHAKTI (LG)**

BM Box 4390, London  
United Kingdom WC1N 3XX

**Shamakami (LB)**

P.O. Box 460456  
San Francisco, California  
USA 94146

**Trikone (LBG)**

P.O.Box 21354  
San Jose, California  
USA 95151 1354  
E-mail trikone@rahul.net

**Trikone - Atlanta (LBG)**

787, Ponce de Leon Terrace  
Atlanta, Georgia  
USA 30306

**Trikone Los Angeles (LBG)**

c/o The Center  
Admin Box 400  
1625 Schrader Blvd  
Los Angeles, California  
USA 90028



## INTERNATIONAL GAY & LESBIAN ORGANIZATIONS

2008

### **Women Supporting Women Committee (I.B)**

WEDPRO

44-43 U.P. Shopping centre

Diliman, Quezon City

Phillipines

### **International Gay & Lesbian Human Rights Commission**

1360 Mission Street, Suite 200

San Francisco, California

USA 94103

### **International Lesbian Information Service**

Nieuwezijds Voorburgwal 68-70

NL 1012 SE Amsterdam

The Netherlands

Ph: 31(0) 206231192

Fax: 31(0) 206267795

Email: [ils@antenna.nl](mailto:ils@antenna.nl)

### **International Lesbian & Gay Association**

c/o Administrative office

81, Rue Marche-au-Charbon

B-1000, Brussels

Belgium

### **International Lesbian & Gay Youth Organisation**

P.O. Box 542

NL-1000, AM

Amsterdam

The Netherlands

### **Lesbian & Gay Immigration Rights Task Force**

P O Box 7741

NEW YORK NY USA

212 802 7264

[info@lgirtf.org](mailto:info@lgirtf.org)

<http://www.lgirtf.org>

### **Gay & Lesbian Parents Coalition International**

P.O Box 34337

San Diego, CA - 92163

U.S.A

Ph: 619 296 0199

e-mail - [crdrew@aol.com](mailto:crdrew@aol.com)

## SUPPORT ORGANIZATIONS IN INDIA



### **AIDS Bhedbhav Virodhi Andolan**

Post Box 5308

New Delhi 110 053

### **DARE - Documentation. Archive. Research. Education** (*A Resource Centre for Lesbians, Gays and Bisexuals*)

Post Box No. 7180

Indraprastha HPO

New Delhi 110002

### **Forum Against Oppression of Women**

c/o 29, Bhatia Bhavan

Babrekar Marg

Off Gokhale Road, Dadar (West)

Mumbai

### **Human Rights Law Network**

Engineer House, 4th floor

86, Mumbai Samachar Marg

Mumbai 400 023

Ph: 2677385, 2676680

Fax. 2632718

### **India Centre for Human Rights & Law**

5th Floor, CVOD Jain High School

84 Samuel Street, Dongri

Mumbai 4000 009

Tel.: 370 2592, 379 0699

E-mail: [huright@viasbm01.vsnl.net.in](mailto:huright@viasbm01.vsnl.net.in)

### **Naz Foundation (India) Trust**

P.O Box 3910, Andrews Gunj

New Delhi 110 049

Ph: 91 11 685 9113

### **Sabrang**

Post box 7625

Bangalore 560076

Email [sabrang@mailcity.com](mailto:sabrang@mailcity.com)

### **Sarani** (*Performing Arts troupe*)

84, Jhowtalla Road

Suite No.2

Calcutta 700 017

### **Siddhartha Gautam Trust for Sexual Minorities and Survivors of Sexual Abuse**

'85/207 Safdarjung Enclave

New Delhi 110 029

## PUBLICATIONS OF INDIA CENTRE FOR HUMAN RIGHTS & LAW

- 1 Towards a National Coalition for Gender Justice. Compiled by Hasina Khan  
Language of publication : English
- 2 Stepping Forward : A compilation of ten women's personal struggle for freedom  
Compiled by Awaaz-E Niswaan. Language of publication : Hindi & English
- 3 Position on Sexual Harassment. Created by Bina Fernandez & Hasina Khan. Language  
of publication : Hindi & English
- 4 Gender Justice & Law Newsletter. Issue No. 1, December 1997  
Topic : Gay & Lesbian Rights
- 5 Gender Justice & Law Newsletter. Issue No. 2, April 1998  
Topic : Sexual Harassment
- 6 Gender Justice & Law Newsletter. Issue No. 3, October 1998  
Topic : Sex Workers. The newsletter is at present published only in English
- 7 IPT Sixth Report : Wounded Valley ... Shattered Souls. Women's Fact-Finding  
Commission Probing into Army Atrocities on Women and Children in Kashmir
- 8 IPT Seventh Report. The Jabalpur Earthquake - An Inquiry into Rehabilitation and  
Disaster Management. By : Justice B N Deshmukh (Retd. Justice Bombay High Court)  
Language of publication : Hindi & English
- 9 IPT Eight Report. Part I) Attack on Minorities - in Nandurga, Maharashtra. By Deepak  
Lokhande, Journalist, Mid Day & Sudhakar Kamble, Journalist, Mahanagar. Compiled  
by Dilipkumar Bhaskaran. Language of publication : English
- 10 IPT Eight Report (Part II), Attack on Minorities. Pilgrims visiting Dadra Nagar-  
Haveli. By : A fourteen member fact finding team. Language of publication : Marathi  
& English
- 11 Bonded Labour Series I Domestic Workers. A Modern Day Manifestation of Slavery  
By : Bharati Pflug, Ravnah Braganza Passanha and Jean Saldanha. Language of  
publication : English
- 12 Medical Waste Fact Sheet. Edited by : Deepak D'Souza & Mamta Sahgal. Language  
of publication : English
- 13 Mercury Safety Poster. Created by : Larissa Pitter, Ladi Francis & Deepika D'Souza  
Language of publication : English


### FORTHCOMING PUBLICATIONS

- 1 The IPT Reports (10th, 11th, 12th & 13th,
- 2 Women & the Law (Vol 1, 2 & 3)
3. Medical Waste Fact Sheet (No.2)



## India Centre for Human Rights and Law

is a comprehensive resource centre specialising in documentation, education, publication of education material, investigations and campaigns on issues related to human rights and law. The Centre looks at human rights in the widest possible way and includes, apart from civil and political rights, the wide range of economic, social, and cultural rights of women, children, tribals, rural poor, dalits, lesbians and gays, slum and pavement dwellers, unorganised labour, prisoners, consumers and those affected by environmental degradation and retrogressive development policies.



- Either of the partners can have a right to maintenance or residence only if destitution is proved. The right to residence is for a maximum period of one year.
- If a child is adopted, the responsibility for providing maintenance and residence to the child is with both parents.

This vision of partnership laws and recognition to homo-relational families is being presented in the context of re-looking at the family, of questioning the dominant understanding of the family as a hetero-relational, monogamous and patrilocal unit. We believe that this is the context in which we need to place the debate of lesbian and gay partnership rights. As stated earlier, in doing so, we presume decriminalisation and anti-discrimination clauses as necessary parts of the law

As the situation exists in India today, none of this is a reality. However, our struggle for our rights is a step towards this reality. Acceptance of families and sexualities other than heterosexual ones has been a long battle all over the world. It is the work of various individuals and groups that has helped achieve some visibility and acceptance to all these issues. We look upon this meeting as a starting point of such a collective struggle within the Indian context.

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SCB

## DECRIMINALISATION



**T**he first step in any move towards lesbian, gay and bisexual rights in India would, of necessity, be the repeal of Section 377 of the Indian Penal Code which criminalises homosexual acts. Aside from the fact that it is used to blackmail and intimidate lesbians and gay men, the existence of such a law precludes the possibility of other legal rights - whether it is protection from discrimination, or partnership benefits.

In the past decade, various groups and individuals in India have demanded the repeal of Section 377. The AIDS Bhedbhav Virodhi Andolan finally took a step towards actualising this demand through its writ petition (see following pages) filed in the Delhi High Court in 1994.

There is generally little disagreement among progressive groups on the need to decriminalise "private, consensual acts of sex between two adults". However, currently Section 377 offers the only legal recourse for victims of child sexual abuse, and coercive sodomy. Since the rape laws do not recognise sexual violations the clause "against the order of nature" interpreted to cover child sexual abuse progressive groups - in particular within around the need for sexual assault laws and coercive sodomy to be introduced, groups are campaigning for a Sections 376 (covering rape) and 377 are repealed, and new laws demanded.



other than penile - vaginal penetration, in Section 377 is unclear enough to be and coercive sodomy. The debate among the women's movement - has centred that explicitly prohibit child sexual abuse before Section 377 is repealed. Women's comprehensive sexual assault bill in which

Lawyers have pointed out that the practical experience of the courts shows that judges would generally be more reluctant to completely repeal a code than to "read it down" (i.e., interpret it in a restricted manner). We could then consider the alternative petition for the interpretation of Section 377 to *exclude* all private, consensual sexual acts between adults.

Included in this chapter on decriminalisation is a summary of the international legal scenario vis-à-vis decriminalisation of homosexuality, a paper presented by Advocate Shobha Aggarwal on the ABVA petition for the repeal of Section 377, an article by Shamona Khanna on Gay Rights (reproduced from *The Lawyers*), information to protect victims of harassment under Section 377, and the signature campaign forms for the repeal of Section 377 (in English and Hindi).

## STRIKING DOWN SODOMY STATUTES - the international legal scenario

8008

**M**ost countries in Europe have repealed sodomy statutes, with France being the first country to do so, in 1791, with the introduction of the *Code Napoleon*<sup>1</sup>. In this century, countries that have repealed similar statutes criminalising homosexuality have generally done so on the grounds of violations of fundamental civil rights to life, liberty, privacy, freedom of speech and expression, and the right to equal protection (against discrimination) under the law. These countries have recognised that the state cannot legislate “private, consensual acts between two adults”.

It is, however, also a fact that physical violence directed at gay men and lesbians occurs even in countries that have decriminalised homosexuality, or in countries that have no explicit sodomy statutes. In fact, in these latter countries, prosecution of gays is often on the general ground of “offences against morality”. The point then, as always, is that “decriminalisation / legalisation” does not necessarily bring about social acceptance. It is one thing to argue that the State should have no power to legislate morality or sexuality, and quite another to broaden the social norms of morality and sexuality. Despite this, lesbians and gay men continue legal struggles throughout the world, forging change so rapidly that it is difficult to keep up to date with the information.

Ironically, it is in the former colonised countries of Asia, Latin America and Africa where laws prohibiting “crimes against the order of nature” persist as relics of the colonial past. In most cases, as in India, while actual prosecution under the law is rare, the threat of the law is used to blackmail or harass gay men and lesbians. As of date, the recent changes in formerly colonised countries have included:

On 25 November 1997, Ecuador’s Constitutional Tribunal repealed the law that criminalised same-sex relations between consenting adults. The Tribunal determined unanimously that Part 1 of Article 516 of the Penal Code was unconstitutional. With the repeal of the Ecuadorian law, the last states in Latin America that still criminalise homosexual activity are Chile, Nicaragua and Puerto Rico<sup>2</sup>.

On the African continent, the most heartening country is South Africa, which is the only country in the world to include “sexual orientation” as an anti discrimination clause in its

<sup>1</sup> Andre Krouwel “Human Rights and Sexual Orientation Or, the Difficult Balance between Morality and Law - A Comparison of Western, Eastern and Central European Countries” Paper presented at the annual meeting of IGLYO Manchester

<sup>2</sup> IGLIIRC 1997 the Year in Review



Constitution since it undermines equal protection under the law for South Africa's homosexual citizens. Delivering his judgement, Judge Jonathan Heher of the Johannesburg High Court stated that "constitutionally [the people of South Africa have] reached a stage of maturity in which recognition of the dignity and innate worth of every member of society is not a matter of reluctant concession but is one of easy acceptance."

International legal institutions and international human rights conventions have been relatively slow to recognise lesbian and gay rights that are violated by sodomy statutes. A classic example is the 1981 decision of the European Court of Human Rights in the *Dudgeon* case (of the United Kingdom). In this case, the Court classified a total ban on homosexuality as a breach of Article 8 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. The judgement striking down the U.K.'s sodomy statute was not automatically applied to other European countries with similar or the same law provisions. Thus, citizens of Ireland (Norris; decision in 1988) and Cyprus (Modinos, 1993) had to go through the whole legal process up to the European Court in order to get the same decision delivered again<sup>3</sup>.

A breakthrough in international recognition of gay and lesbian rights came in 1994, with Amnesty International publishing the book **Breaking the Silence: Human Rights Violations Based on Sexual Orientation**. Since then, international lesbian and gay rights lobbying has resulted in international institutions and human rights organisations pressurising countries to repeal existing sodomy statutes.

1994 also witnessed the landmark judgement in the case of *Nicholas Toonen v. Australia* in which the United Nations Human Rights Court directed the State of Tasmania to repeal its sodomy statute. Mr. Nicholas Toonen, a gay activist of Tasmania successfully argued that this statute violated Articles (protecting life, liberty, privacy, freedom of speech and against discrimination) of the *International Covenant on Civil and Political Rights*. After nine years of community organising to repeal Tasmania's anti-gay law, the Tasmanian legislature finalised a vote to repeal their statute criminalising same-sex relations on May 1, 1997.



Despite the European Court of Human Rights decision in favour of decriminalisation in Cyprus in 1993, the Cypriot House of Representatives stalled the process due to militant opposition from the dominant Greek Orthodox Church. Finally, the Council of Europe an umbrella organisation of European states, Eastern as well as Western threatened Cyprus with expulsion if the law was not repealed by May 29, 1998. Thus pressurised, on 21 May 1998, the parliament of the Republic of Cyprus voted to change its law. However,

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<sup>3</sup> ILGA Euro Letter No.60, Jun 1998

the new law appears to be even more repressive since it would punish “encouraging” homosexuality, as well as public manifestations of it - including placing personal ads for gay partners. According to Scott Long, European researcher for the International Gay and Lesbian Human Rights Commission (IGLHRC), “The new law is no “reform” at all, but a new, improved instrument of repression. It threatens not only privacy but basic freedoms of expression and association.”<sup>4</sup>

Conservative forces in any society can thus revoke the hard won gains of lesbian and gay rights advocates. In the U.S this battle is being fought state-wise. So, thirty one states have repealed the sodomy statutes in the U.S, usually as part of a general revision of the criminal code, with the recognition that heterosexuals as well as homosexuals engage in oral and anal sex. However, there are twenty states that still retain sodomy statutes. Of these, five state’s laws apply only to same-gender activity - Kansas, Missouri, Oklahoma, Arkansas, and Maryland. Fourteen other states have an opposite and same-gender sodomy law - Idaho, Utah, Arizona, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, Massachusetts, Michigan and Minnesota<sup>5</sup>.

In fact, in a shocking setback, in 1986, the US Supreme Court upheld the Georgia sodomy statute in the *Bowers v. Hardwick* judgement, declaring that state laws prohibiting homosexual sodomy are not unconstitutional. Justice Byron R. White rejected the argument that previous decisions such as the Court’s rulings on abortion and contraception had created a right of privacy that extends to homosexual activity. Instead, the Court drew a sharp distinction between the previous cases, which involved “family, marriage, or procreation,” and homosexual activity. Justice White observed that the former are liberties that are deeply rooted in tradition. To the argument that homosexual activity should be protected when it occurs in the privacy of a home, Justice White said, “otherwise illegal conduct is not always immunised whenever it occurs in the home. For example, the possession of drugs or stolen goods is not protected because it occurs at home.”

Of course, such a judgement is in the conservative tradition of circular arguments, “it is illegal/immoral because it has been defined so” When cases challenge the legality of criminalisation, a just examination of the case should not begin with the presumption of illegality – as the judge in this case has done

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<sup>4</sup> IGLHRC 1997 the Year in Review

<sup>5</sup> GayLawNet - GayLawNews, June 1998

## Country and Continent wise Status of Decriminalisation of Homosexuality

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Several organisations and researchers have worked on compiling information on the legal status of homosexuality around the world - each list building on the previous one as information is constantly updated. The list on the following pages is based on primarily the Amnesty International and ILGA sources, to which current IGLHRC information has been added. A few cautionary notes that the compilers of these lists have used as a preface bear repeating here. Firstly, laws and their interpretations and enforcement are complex phenomena that are specific to the cultural contexts - and this cannot be reflected in a table such as the one below. Some discussions on this, as well as social attitudes to the law are in the sources cited. Secondly, the absence of a country from this list, or the fact that homosexuality is "not mentioned in law as such" does not necessarily indicate that gays and lesbians are not prosecuted in that country under "morality" or "decency" laws.

### Key to Sources

- |        |  |
|--------|--|
| I      | <i>Index on Censorship</i> , Laura Bruin 1995  |
| P      | <i>The Third Pink Book</i> , Aart Hendriks et al, 1993   |
| G      | <i>ILGA (International Lesbian and Gay Association) Annual Report</i> , 1996/7                                 |
| H      | <i>Human Rights Guide</i> , Charles Rumana, 1989   |
| A      | <i>Breaking the Silence: Human Rights Violations Based on Sexual Orientation</i> , Amnesty International, 1997 |
| IGLHRC | <i>International Gay and Lesbian Human Rights Commission</i>   |

## EUROPE

Country	Source	Law (Includes date of decriminalisation, or Penal Code Article, and maximum sentence available if known)
Albania	A	Legal since 1994
Andorra	Gl	Not mentioned in law as such
Armenia	Gl	Illegal for men, women not mentioned.
Austria	P	Legal from age 18 since 1971
Azerbaijan	P	Illegal for men, women not mentioned
Belgium	I	Legal from age 16 since 1792
Bosnia – Herzegovina	A	Illegal for men. Section 93.2 “Unnatural debauchery” 1 year imprisonment.
Bulgaria	P	Legal from age 21 since 1968
Croatia	Gl	Legal from age 18
Cyprus	IGLHRC	Illegal Although the European Court of Human Rights required decriminalisation of the sodomy statute in 1993, the parliament has yet to implement this
Czech Republic	Gl	Legal from age 15.
Denmark	Gl	Legal since 1930
Estonia	P	Legal since 1992
Faroe Islands	GL	Legal
Finland	P	Legal since 1971
France	I	Legal since 1791
Georgia	I	Illegal for men, women not mentioned.
Germany	I	Legal.
Greece	I	Legal.
Hungary	Gl	Legal
Iceland	Gl	Legal
Ireland	A	Legal since 1993
Italy	I	Legal since 1889.
Latvia	P	Legal since 1992.
Liechtenstein	Gl	Legal
Lithuania	I	Legal since 1993
Luxembourg	I	Legal since 1792 from age 16
Macedonia	I	Illegal for men. Section 101 (2) 1 year imprisonment Women not mentioned
Moldova	Gl	Illegal for men, women not mentioned

Monaco	GI	Legal
Montenegro	GI	Legal from age 14 since 1977.
Netherlands	P	Legal since 1811 from age 16.
Norway	P	Legal from age 17 since 1972
Poland	GI	Legal since 1969
Portugal	GI	Legal from age 14
Romania	A	Illegal "If causing public scandal" under Article 200 5 years imprisonment
Russian Federation	A	Legal from age 15 since 1993
San Marino	GI	Legal
Serbia	GI	Legal
Slovakia	GI	Legal
Slovenia	GI	Legal
Spain	GI	Legal
Sweden	GI	Legal from age 15
Switzerland	GI	Legal since 1942
Ukraine	A	Legal since 1991
United Kingdom	GI	Legal from age 18
Vatican City	GI	Legal

## ASIA - PACIFIC & MIDDLE EAST

Country	Source	Law (Includes date of decriminalisation, or Penal Code Article, and maximum sentence available if known)
Afghanistan	I	Illegal for men and women Sharia Law applies
Armenia	P	Illegal for men
Australia	A, IGLHRC	Legal in all states since Tasmania repealed it s sodomy statute in 1998
Bahrain	P	Illegal for men and women Sharia Law applies
Bangladesh	P	Illegal for men and women – imprisonment upto 7 years
Bhutan	I	Illegal for men.
Brunei	P	No legal information obtained
Burma	GI	No legal information obtained
Cambodia	GI	No legal information obtained

China	Gl	Not mentioned in law as such. Some prosecution under Section 106 "Hooliganism", "Disturbance against the social order" Imprisonment upto 5 years
Fiji	I	Illegal for men. Section 168 "Carnal knowledge against the order of nature" - 14 years imprisonment. Section 169 "Attempts" imprisonment upto 7 years. Section 170 "Gross indecency" - 5 years imprisonment plus possible corporal punishment
French Polynesia	I	Legal.
Guam	Gl	No legal information obtained
Hong Kong	I	Legal since 1991
India	I	Illegal for men. Section 377 "Unnatural act against the order of nature" - imprisonment or fine
Indonesia	I	Not mentioned in law as such.
Iran	I	Illegal for men and women. Sharia Articles 139 to 156 - punished by execution including death by stoning or cleaving in two, amputation of hands or feet, whipping.
Iraq	P	Not mentioned in law as such. Section 293 of the Penal Code punishes gay men and lesbians who commit sexual acts without the consent of the partner
Israel	I	Legal since 1988
Japan	Gl	Not mentioned in law as such.
Jordan	I, Gl	Illegal for men and women
Kazakhstan	A	Legal since 1993
Kiribati	Gl	Illegal for men. Section 153 "Buggery" - 14 years imprisonment. Section 155 "Attempted buggery" - 7 years imprisonment. Section 155 "Gross indecency private or public" - 5 years imprisonment
Korea Republic of	Gl	Not mentioned in law as such
Korea Democratic Republic of	Gl	Legal for men and women
Kuwait	Gl	Illegal for men and women. Sharia Laws apply
Kyrgyzstan	A	Illegal for men and women. Article 112
Laos	A	No information obtained (Arrests of homosexuals reported in 1992)
Lebanon	I	Illegal for men and women.

Macao	I	Legal
Malaysia	Gl, P, IGI.HRC	Illegal for men. Section 377, 377a. Contradictory reports on whether law applies to women as well.
Maldives	Gl	No information available.
Marshall Islands	Gl	Not mentioned in law as such
Micronesia	Gl	Not mentioned in law as such.
Mongolia	Gl	Not mentioned in law as such
Nauru	Gl	No information available
New Zealand	P	Legal from age 16.
New Caledonia	P	Legal
Niue	Gl	Illegal for men. Section 170 "Buggery" 10 years imprisonment Section 171 "Indecent assaults on men" 5 years imprisonment
Oman	P	Illegal for men and women Section 32 - 3 years imprisonment
Pakistan	P	Illegal for men and woman "Carnal knowledge against the order of nature" Section 377 - life imprisonment and 100 lashes
Papua New Guinea	P	Illegal for men
Philippines	Gl	Not mentioned in law as such
Qatar	P	Illegal for men and women Sharia Law applies
Saudi Arabia	Gl	Illegal for men and women Sharia law applies
Singapore	Gl, P	Illegal for men and women Section 377, 377a
Solomon Islands	Gl	Illegal for men
Sri Lanka	Gl	Illegal for men
Syria	Gl	Illegal for men and women. Section 52 "Carnal knowledge against the order of nature" - 3 years imprisonment
Taiwan	Gl	Legal for men and women. Offence for soldiers "Converted to homosexuality" - punishable by possible execution
Tajikistan	Gl	Illegal for men, women not mentioned
Thailand	Gl	Legal from age 16.
Tonga	Gl	Illegal for men Section 126 "Abominable crime of sodomy" life imprisonment Section 127 "Attempts" - 7 years imprisonment

Turkey	Gl	Not mentioned in law as such, but prosecutions under indecency laws
Turkmenistan	Gl	Illegal Section 126 - 5 years imprisonment
United Arab Emirates	P	Illegal for men and women. "Unnatural offences" - 14 years imprisonment "Obscene acts" - fine or 2 years imprisonment
Uzbekistan	Gl	Illegal for men. Article 100 women not mentioned
Vanuatu	Gl	Not mentioned in law as such
Vietnam	P	Not mentioned in law
Western Samoa	Gl	Illegal for men and women
Yemen	Gl	Illegal for men and women

## AFRICA

Country	Source	Law (Includes date of decriminalisation, or Penal Code Article, and maximum sentence available if known)
Algeria	I	Illegal for men and women. Section 338 3 years imprisonment.
Angola	P	Illegal Offence against public morality.
Benin	I	Not mentioned in the law
Botswana	A	Illegal for men. Section 164 and Section 167 "Carnal knowledge against the order of nature" - 2 years imprisonment.
Burkina Faso	I	Legal from age 21 Section 331 applies for those under 21 years
Burundi	A	Not in law as such, but punishable as an immoral act.
Cameroon	Gl	Not mentioned in law as such.
Cape Verde	Gl	Illegal for men & women. Section 390, Section 391, Section 405 and Section 406 "Act against nature" and "Assaults on public or personal decency"
Central African Republic	Gl	Not mentioned in law as such
Chad	Gl	Not mentioned in law as such
Comoros	Gl	No information obtained
Congo	Gl	Not mentioned in law as such.
Djibouti	A	Illegal.



Egypt	P	Not mentioned in law as such.
Ethiopia	P	Illegal for men and women Section 601 and Section 602 - 3 years imprisonment.
Gabon	I	Not mentioned in law as such
Gambia	Gl	No information obtained
Ghana	I	Illegal for men
Guinea Bissau	P	No legal information available
Ivory Coast	P	Not mentioned in law as such.
Kenya	I	Illegal for men Section 162 - 5 "Carnal knowledge against the order of nature" - 14 years imprisonment and corporal punishment
Lesotho	I	Not mentioned in law
Liberia	I	Not mentioned in law
Libya	I	Illegal for men and women Section 407 (4) - 5 years imprisonment
Madagascar	Gl	Not mentioned in law as such
Malawi	I	Illegal for men and women Article 153 "Unnatural offences" Article 156 "Public decency"
Mal.	Gl	No legal information available
Mauritania	Gl	Illegal for men and women. Sharia laws apply execution
Mauritius	Gl	Illegal for men and women
Morocco	Gl	Illegal for men and women. Section 489 "Unnatural sex acts" liable to prosecution and 3 years imprisonment with fine of 1000 dinars
Mozambique	Gl	Illegal for men and women. Section 70 and 71 - 3 years imprisonment
Namibia	Gl	Illegal for men "Unnatural sex acts" liable to prosecution Women not mentioned in law
Niger	Gl	No legal information available.
Nigeria	Gl	Illegal for men. Article 214 "Carnal knowledge against the order of nature" - 14 years imprisonment Women not mentioned in law
Reunion	Gl	Legal
Rwanda	Gl	Not mentioned in law
Sao Tome & Principe	Gl	No legal information available
Senegal	Gl	Not mentioned in law as such
Seychelles	Gl	Illegal for men and women

Sierra Leone	Gl	No legal information available
Somalia	Gl	No legal information available
South Africa	Gl	Legal since 1998 court ruling decriminalising sodomy statute
Sudan	Gl	Illegal for men and women
Swaziland	Gl	Illegal for men and women imprisonment or fine
Tanzania	Gl	Illegal for men. Articles 154 to 157 14 years imprisonment.
Togo	P	Illegal for men-3 years imprisonment
Tunisia	Gl	Illegal for men and women Section 230
Uganda	Gl	Illegal for men. Section 140 "Carnal knowledge against the order of nature"-life imprisonment. Section 143 "Procurement or gross indecency" 5 years imprisonment
Zaire	P	Illegal for men and women. Section 168 to 172 "Crime against family life"
Zambia	P	Illegal for men Section 155 to 158 14 years imprisonment
Zimbabwe	P	Illegal for men fines

## NORTH, SOUTH & CENTRAL AMERICAS

Country	Source	Law (Includes date of decriminalisation, or Penal Code Article, and maximum sentence available if known)
Antigua & Barbuda	P, I, Gl, IGLIIRC	Contradictory reports-possibly decriminalised
Argentina	P	Not mentioned in law as such "Offence against morality" - 30 days imprisonment
Aruba	P	Legal from 16 years.
Bahamas	Gl	Illegal for men and women Section 390 for men Section 52g for women 10 years imprisonment (Law due to be repealed)
Barbados	P	Illegal for men and women.
Belize	P	Legal since 1988
Bermuda	I	Illegal for men. Section 173 "Homosexual act" 10 years imprisonment "Attempted contact" 5 years imprisonment
Bolivia	I	Legal
Brazil	Gl	Not mentioned in law as such

Canada	Gl	Legal from age 18 since 1988.
Cayman Islands	Gl	Illegal for men. Article 142. Women not mentioned in the law
Chile	Gl	Illegal for men. Article 365 Women not mentioned in the law (Ongoing attempts to decriminalise sodomy laws)
Colombia	Gl	Not mentioned in law as such.
Costa Rica	Gl	Not mentioned in law as such.
Cuba	P	Illegal for men and women. Article 303 to 309 "Public scandal" – 1 year imprisonment.
Dominica	P	No information obtained
Dominican Republic	P	Not mentioned in law as such, but often punished as "Offence against morality".
Ecuador	Gl	Illegal for men Article 516 – upto 8 years imprisonment.
El Salvador	P	Not mentioned in law as such.
Falklands	Gl	Legal as in the U K.
French Guyana	I	Legal.
Greenland	Gl	Legal.
Grenada	Gl	No information available
Guadeloupe	Gl	Legal
Guatemala	Gl	Not mentioned in law as such.
Guyana	I	Illegal for men Section 353 - possible life imprisonment. Section 242 "Buggery" - 10 years imprisonment. Section 351 "Attempted buggery" - 2 years imprisonment.
Haiti	Gl	Not mentioned in law as such
Honduras	Gl	Not mentioned in law as such.
Jamaica	Gl	Illegal for men. Section 76 - 9 - imprisonment for 10 years
Martinique	Gl	Legal.
Mexico	Gl	Not mentioned in law as such.
Netherlands Antilles	Gl	Legal
Nicaragua	Gl.	Illegal for men and women
Panama	P	Not mentioned in law as such.
Paraguay	P	Not mentioned in law as such
Peru	Gl	Legal.

Puerto Rico	Gl	Illegal
Saint Kitts & Nevis	Gl	Not available
Saint Lucia	Gl	Illegal for men and women
Surinam	Gl	Legal
Trinidad & Tobago	Gl	Illegal for men and women. Section 13 Sexual Offences Article "Buggery" - 10 years imprisonment Section 16 "Serious indecency" - 2 years imprisonment
Turks and Caicos Islands	Gl	Illegal for men, women not mentioned.
United States	Gl	Legal in 31 states, illegal in 20 states
Uruguay	Gl	Not mentioned in law as such.
Venezuela	Gl	Legal from age 18.

## ABVA Writ Petition for the Repeal of Section 377

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*Ms. Shobha Aggarwal, ABVA*

*Paper presented at workshop on "Strategies for furthering  
lesbian, gay & bisexual rights in India", Mumbai, 1997*

**T**he law criminalising homosexuality was first suggested during British rule by the Indian Law Commission in 1837. Their report of that period records the absurd information that although homosexuality was "extinct" it was necessary to introduce this law without debate, since they feared debate might put ideas into people's heads about the possibilities! In 1861 this law was codified in the Indian Penal Code along with other criminal laws.

The history of the public debate on the repeal of Section 377 begins soon after the release of *Less than Gay*, when a petition was moved by AIDS Bhedbhav Virodhi Andolan (ABVA) in the Petitions Committee of Parliament. The repeal of Section 377 could be demanded on the grounds that it violates the following articles of the Indian Constitution

1. Article 14-15 (Right to protection against discrimination)
2. Article 19 (Right to freedom of speech and expression),
3. Article 21 (Right to life and liberty - which encompasses the right to privacy)

This parliamentary petition has, however, remained dormant till date for want of a Member of Parliament to argue the petition in parliament. Meanwhile, in 1994, media attention focused on Tihar jail where Inspector General of Prisons, Kiran Bedi refused to allow distribution of condoms to the male prisoners on the grounds that there was no homosexual activity in the prisons. She argued that even if there was, the prison authorities would be encouraging a crime. ABVA used this incident to initiate a public interest litigation in the Delhi High Court for the repeal of Section 377 of the IPC. This petition uses the immediate reasons of the sexual health of prison inmates as one ground for the repeal of Section 377. A summary of the petition follows.

## Summary of Civil Writ Petition 1784 of 1994 in the High Court of Delhi

AIDS Bhedbhav Virodhi Andolan (ABVA)

(AIDS Anti-Discrimination Movement)

*Petitioner*

*versus*

1. Union of India and Others
2. Delhi Administration
3. The District and Session Judge, Tis Hazari
4. Inspector General of Prisons, Tihar Jail
5. Superintendent of Jail, Tihar Jail
6. National AIDS Control Organisation (NACO)

*Respondents*

A writ petition under Articles 226 and 227 of the Constitution of India challenging the Constitutional validity of Section 377 of the India Penal Code 1861 and for the issuance of a writ in the nature of Mandamus, certiorari, prohibition or any writ direction or order directing the respondents to take appropriate measures in order to prevent the spread of the disease known as AIDS and the targeting / segregation of certain groups or individuals

The petitioner urges:

1. That the ABVA is an association established in 1988 working in the field of AIDS, has brought out several reports on the status of the so-called high risk groups, including "Less than Gay", a report on the status of homosexuality in India
2. That as reported in the Press recently *The Pioneer* 10.2.94, 21.2.94, 27.3.94 and 2.4.94 respondent No. 4 Ms Kiran Bedi, I.G. Prisons has made statements which will lead to horrific consequences, that condoms will not be supplied in the Tihar Jail because it would a) mean encouraging homosexuality, b) admitting that homosexuality is rampant amongst prisoners and since it is a crime under Article 377 IPC, distributing condoms will mean acceptance of a crime and aiding this crime
3. That the petitioner fears that the Government's own National AIDS program is not going to be implemented, condoms are not going to be supplied to prisoners and those suspected to be homosexual might be segregated or prosecuted under Section 377.

4. That this will lead to large-scale spread of HIV infection in India. Preventing HIV transmission in prisons not only protects prisoners, but the larger communities also since the prisoners may leave the jail infected and spread the infection.
5. That sex between prisoners is widespread all over the world, inspite of penalties. Consensual adult sexual acts cannot be clubbed with forced homosexual acts, which the petitioner is against.
6. That a plain reading of Section 377 shows that homosexuality per se is not an offence, sodomy (heterosexual or homosexual) is.
7. That Section 377 itself is obsolete and must be struck down as being unconstitutional and violative of fundamental rights of Indian citizens for following (among other) reasons.
  - a) Because the right to privacy is part and parcel of the fundamental right to life and liberty under Article 21 of the Constitution and has also been recognised by the International Convention on Human Rights 1948.
  - b) Because Section 377 is violative of Article 14 of the Constitution since it discriminates against persons purely on basis of their sexual orientation.
  - c) Because drafted in 1833, Section 377 is archaic and absurd, passed by the British in all its colonies. Campaigns in other countries have resulted in decriminalising private adult homosexual consensual acts (in England & Wales in 1967, Hong Kong 1990). India is one of the few countries to retain this law.
  - d) Because even Amnesty International has taken a positive stand on homosexuality in its report of 1987. The Kinsey report on Human Sexuality in 1948-53 surveyed that 2% of women are lesbian and 4% of men are homosexual. The American Psychiatric Association established homosexuality to be perfectly normal. The President, Indian Medical Association has also made a statement to this effect. The idea that sexual relations must take place only within a prescribed sexual format shows bias, ignorance and lack of tolerance.
8. That even if Section 377 is not held unconstitutional by the court, the court should direct the respondents to supply condoms to jail inmates without segregation, for AIDS prevention and other reasons.
  - a) Because segregation, torture, and surveillance will go against fundamental rights of prisoners and would not prevent spread of HIV. The most obvious way of AIDS prevention is to make condoms available at the jail pharmacy, which would be in keeping with public interest and health.
  - b) Because there is no nexus between distribution of condoms and increased sexual activity.

- c) Because the National AIDS Control Programme must be implemented which ensures condoms to all citizens including prisoners, failing which the Rs 200 crores been given to the Union Government from the World Bank after signing the London Declaration can be withdrawn.

## Prayer

The petitioner prays the Court to:

- a) Declare Section 377 of IPC 1908 as unconstitutional and void;
- b) Direct the implementation of Government's National AIDS programme
- c) Restrain respondents from segregating or isolating prisoners with a certain sexual orientation or those suffering from AIDS;
- d) Direct the respondents to immediately make condoms available at the dispensary in Tihar Jail, as also disposable syringes,
- e) Direct the jail authorities to regularly consult respondent 6, NACO,
- f) Direct an independent citizen's inquiry to look into health of prisoners and sanitary conditions in Tihar Jail.

We have also made it clear that the forced sodomy (between men) should be considered as rape and accordingly made punishable.

The case was admitted by the High Court on 8th February 1995 and is soon coming up for final arguments. Indian Council of Medical Research (ICMR) and All India Institute of Medical Sciences (AIIMS) have also been made respondents.

In the meanwhile, Union of India, NACO, Delhi Administration, I.G. of Tihar Jail (Kiran Bedi) had filed their rejoinders to which we replied. Union of India and NACO's rejoinders are very positive and support our petition. Kiran Bedi has stuck to her earlier response and has sworn on affidavit that:

1. There is no homosexuality in the Jail,
2. That there are no HIV positive / AIDS patients in the Jail

Both of which are very ironical. The first statement is self contradictory, as she also states in the petition that if and when there are such incidents, these are dealt with severely

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## Gay Rights

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**Shamona Khanna**

(reproduced from *The Lawyers*, June 1992)

*Homosexuality has for long been a tabooed subject – never spoken of, never discussed and yet practised. The social outlook towards homosexuality was codified in the law in the severely punitive Section 377 of the Indian Penal code of 1860. Today, the Section stands out as an anachronism, in sharp variance with international law, covenants to which India is a signatory and the Indian Constitution itself. Shamona Khanna outlines the changing attitudes towards homosexuality – both social and legal – and sharply focuses on the need for a change in the law on homosexuality.*

**P**atriarchal society has for centuries attempted to control human sexual behaviour through severe social and legal sanctions against any deviations from the stereotype family – male headed, heterosexual, monogamous, child rearing, indissoluble. Sexual relations were confined to within the marriage and there too, to procreative rather than recreative purposes.

Challenge to the heterosexual family stereotype has always existed, but has gained momentum in this century with the growth of the women's movement, the sexual revolution and recently, gay liberation. In India, however, the majority of homosexuals lead secret and lonely lives, and those who do "come out" or get "caught" are often subject to severe censure, and under the Indian Penal Code, 1860, male homosexuals might even face imprisonment.

### Position in UK

The King James version of the Bible in Leviticus 20:13 states: "If a man also lie with mankind as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death, their blood shall be upon them." (see also Leviticus 18:22).

This exhortation and the destruction of Sodom and Gomorrah is seen as the source of criminalisation of sodomy by common law countries. The English buggery statute of 1533 prescribed death for sodomy and in several instances, executions were carried out. The 1861 Offences Against the Person Act removed the death penalty for buggery, replacing it by sentences of between ten years and life. The Indian Penal Code, 1860 still prescribes similar punishments.

In 1885, the Criminal Law Amendment Act, frequently referred to as the 'blackmailer's charter', made gross indecency, which includes all homosexual activities except 'buggery', punishable for the first time. In 1898, the laws on soliciting for "immoral purposes" were tightened and made to apply to male homosexuals. Lesbian activities were not acknowledged to exist and therefore were not proscribed. The Sexual Offences Act, 1956 consolidated all the existing law on the subject.

On the recommendation of the departmental committee on homosexual offences and prostitution under the chairmanship of Sir John Wolfenden, the Sexual Offences Act, 1967 was passed. It states: "A homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age 21 years", except with a person suffering from severe handicaps, on a UK merchant ship, and if any of the Armed Forces Acts forbids it. Punishments range from life for buggery on a boy under sixteen or a woman, to two years for gross indecency. Solicitation by men still remains an offence as defined in Section 32 of the 1956 Act.

The armed forces ban entry of homosexuals, but a parliamentary committee in May 1990, recommended dropping of the policy because it has resulted in "the loss to the services of some men and women of undoubted competence and good character" (*Time*, 19 August 1991).

### Position in US

Most states in the USA had sodomy statutes of their own, and those that did not, incorporated the common law principles from the old English laws. At least half the statutes still retain sodomy statutes defining it variously. The age of consent also varies.

Foreigners/immigrants found to be homosexual are liable to be deported immediately. Homosexuals, both gay men and lesbians, are barred from the armed forces. Since 1943, when military psychiatrists redefined homosexuality as a medical disorder rather than a crime, the US armed forces have ousted between 80,000 and 100,000 gay men and lesbians (*Time*, 19 August 1991).

### Position in India

In India, homosexuality has traditionally been tolerated, even celebrated, although the Manu Smriti pronounces severe punishments for male as well as female homosexuality. The Kamasutra contains an entire chapter entitled 'Auparishtaka' (oral congress) and Vatsyayana, the author insists that the practice is permitted by the orders of the holy writ (Dharma Shastras) with just a few exceptions. One of the forms in which Shiva is worshipped is Ardhanarishwara, containing both the male and the female energies.

Alain Danielou in his book "Shiva and Dionysius" examines the tantric rite of anal penetration and goes on to state " the hermaphrodite, the homosexual and the transvestite have a symbolic value and are considered privileged beings, images of Ardhanarishwara."

The British obviously found the practice unchristian and abhorrent and in 1860, enacted the Indian Penal Code which in Section 377 states:

*"Unnatural offences – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.*

*Explanation. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section"*

The exact scope of this vague definition – "carnal intercourse against the order of nature" – has been a major subject of debate in the existing case law. It has generally been interpreted to include acts of anal sex (coitus per anum) as well as oral sex (coitus per os) between males. The possibility of this definition being extended to heterosexual acts of anal or oral sex also exists, but has not been tested. Consent of the other party is completely irrelevant for conviction, but it may be a relevant consideration while fixing the quantum of punishment.

It must be pointed out that homosexuality per se is not an offence and an "act" of unnatural intercourse has to be proved. In *Queen Empress v/s. Khairati* [(1884) 6 All. 204], medical evidence to show that the accused was a "habitual catamite" was held to be insufficient for a conviction under Section 377, since no single incident of sodomy could be proved

## **Precedents**

Contrary to popular belief, a large body of case law exists on the subject, which has evolved quite independently from the English statutes on which it was initially based

In the 30 cases (see table on following pages) under Section 377 which came before the various High Courts and the Supreme Court since 1830, the large majority of prosecutions have been for non-consensual acts of sodomy, with only 4 cases where consensual acts of sodomy have been brought to court, 3 of them prior to 1940. In addition, most of the cases, 15 out of 30, are of assaults committed on minors, only 5 out of 30 being on adults.

Many of these people had been tricked, tempted or even kidnapped and taken to lonely places and raped. Thus, though the scope of the Section covers all cases of sodomy,

**Distribution of cases decided by High Courts & Supreme Court (1830-1989) between Consent, Age and Quantum of Sentences.**

	No. of Cases	No. of Convictions	Consent	Non-Consensual	Not Specified	Age	Minor (18+)	Not Specified	Punishments	Max. Sentence	Average	Not Specified
1830-1879	1	1	-	-	1	-1-	-	1		-	10 years	-
1880-1929	6	2	1	4	1	4	-	2		-	5 years RI	2
1930-1929	8	5	2	5	1	6	1	1	(attempted) 4 months RI	5 years RI + 20 stripes	2 years RI	-
1940-49	2	0	-	2		1	1	-	-		-	
1950-59	2	1	-	-	2 (dead)	-	-	2	-		-	2

### Distribution of cases decided by High Courts & Supreme Court (1830-1989) between Consent, Age and Quantum of Sentences.

	No. of Cases	No. of Convictions	Consent	Non-Consensual	Not Specified	Age	Minor (18+)	Not Specified	Punishments	Max. Sentence	Average	Not Specified
1960-69	4	4	-	4		3	1		1 year RI	5 years RI	2 years RI	-
1970-79	5	3	-	2	3	1	1	3	2 months RI	4 years RI + fine	2 years RI	-
1980-89	2	2	1	1	-	-	1	1	6 mths RI	1 year RI + fine	8 mths RI	-
Total	30	18	4	18	8	15	5	10	2 months RI	5 years RI + stripes	-	-

Source: Independent Research Board on Law Reports

whether consensual or non consensual, an overview of the cases actually prosecuted reveals that they are mainly rape cases.

What purpose does this law serve except to create another group of persons vulnerable to blackmail by the police and sections of the public. The Assistant Commissioner of Police (Crime), New Delhi, Shri Virendra Singh stated in an interview that the city crime records for 1990 91 show that not even one case was registered in Delhi under Section 377. According to newspaper reports, the two cases of sodomy in Delhi in 1992, have both been non consensual, one of an 8 year old boy, and the other where an adult man was raped by two men.

Yet, every evening, plain clothes policemen spread out over gay men's meeting places in all metropolitan cities to entrap, humiliate, extort money from, and even force sex on gay men under the threat of criminal prosecution. The extension of the Immoral Traffic (Prevention) Act, 1986 to men as well as women has only worsened the situation.

In *Emperor v/s. Kaku Mashgul* [AIR 1944 Sind 33], while considering whether corroboration of the victim's story, a boy of eight years, that Kaku Mashgul had sodomised him, was necessary, the court applied the rule of evidence applicable to rape cases after examining the large body of statutory and case law applicable to rape. This principle has been followed ever since.

There is thus no reason why the law relating to rape of women by men [Sections 375, 376 IPC, Section 114A Indian Evidence Act] cannot be extended to cover cases of rape of men by men. Given the actual manner in which Section 377 is implemented, its existence is redundant. Its repeal becomes even more urgent, given the untold distress it causes to gay men.

## Right to Privacy

In 1955, the American Law Institute Model Penal Code stated that every individual is entitled to protection "against state interference in his personal affairs when he is not harming others" and eliminated the sodomy statutes. In 1957, the Wolfenden Committee (UK) stated that "it is not the function of criminal law to intervene in the lives of citizens or to seek to enforce any particular pattern of behaviour. There must remain a realm of private morality and immorality which is in brief and crude terms, not the law's business". After examining extensive data and various arguments for and against, it recommended that private consensual sexual activity between adult males be removed from the operation of criminal law.

The Constitution of India guarantees that "No person shall be deprived of his life or personal liberty except according to procedure established by law." (Article 21). The provision

has been through considerable judicial interpretation and a fledgling right to privacy has been read into the right to life and personal liberty.

In *Kharak Singh v/s. State of U.P.* [AIR 1961 SC 1295], while considering the vires of certain police regulations which allowed surveillance, including domiciliary visits, of Subba Rao J., stated that the right to privacy “is an essential ingredient of personal liberty” and that “nothing is more deleterious to man’s physical happiness and health than a calculated interference with his privacy.”

In *Gownd Singh v/s. State of M.P.* [(1975) 3 SCR 946], a right to privacy emanating from the right to personal liberty and the freedom of speech was contemplated.

The 5th and 14th Amendments to the U.S Constitution state that no person shall be deprived of his “life, liberty or property, without due process of law” and a right to privacy, or a “right to be let alone “ has been interpreted into these provisions for over a century.

The concept initially evolved in response to the development of new sophisticated methods of surveillance, like wiretaps etc akin to right to property. More recently, privacy of a human personality has also been recognised.

*Griswold v/s. Connecticut* [38 US 479], in 1965, recognised the privacy of the bedroom of married couples. Following this principle, the U.S Supreme Court has held that private consensual acts of sodomy between married couples cannot be criminalised by state statutes [*Charles O. Cotner v/s. Jerome Henry*, 393 US 847; *Buchanan v/s. Batchelor* 401 US 489].

In *Eisenstadt v/s. Baird* [405 US 438] the court held the *Griswold* principle protected more than the marital relationship alone. It extended protection to persons who had a significant personal relationship and desired to choose for themselves, free from state pressures, whether or not they wanted to use contraception.

In *Roe v/s. Wade* [410 US 113], it was held that a Texas abortion law could not prohibit voluntary abortions during the first 3 months of pregnancy, on the basis of a constitutional right to privacy. “That right includes the privilege of an individual to plan his own affairs, for outside the areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases.”

In spite of the recognition of these basic principles of human behaviour, the U.S Supreme Court has displayed singular lack of understanding when it comes to statutes criminalising sodomy. The constitutionality of these statutes has been challenged several times and has largely been upheld.

Most recently, in *Bowers v/s. Hardwick* (1986), the State of Georgia statute which criminalised sodomy was challenged after a homosexual was charged with committing sodomy on a

consenting male adult in the bedroom of his house. The US Court of Appeals for the Eleventh Circuit upheld the challenge and put the burden on the state “to provide that it has a compelling interest in regulating such behaviour and that the statute was the most narrowly drawn means of achieving that end” [760 F 2d 1202]

The U.S Supreme Court reversed the judgement with a narrow 5:4 margin. The dissenting judges observed “the concept of privacy embodies the moral fact that a person belongs to himself and not others nor to society as a whole.”

The question also came before the European Court of Human Rights in *Jeffrey Dudgeon vs. Northern Ireland* [European Court of Human Rights, Series A, volume 45]. Jeffrey Dudgeon, 35 years old and consciously homosexual from the age of 14, lived in Belfast, Northern Ireland. He along with some others had been conducting a campaign aimed at bringing the law in Northern Ireland in line with that in England and Wales.

On 21 January 1976, the police went to his house, and seized personal papers including diaries and correspondence. He was asked to go to police station where he was questioned for almost 4 ½ hours about his sexual life. With a view to institute proceedings for gross indecency, the police sent his file to the Director of Public Prosecutions. One year later, in February 1977, Mr. Dudgeon was informed that charges were not being pressed and his papers returned.

Mr Dudgeon petitioned the European Commission of Human Rights alleging violation of Article 8 of the *European Convention on Human Rights*, corresponding to Article 12, *Universal Declaration of Human Rights*.

The European Court of Human Rights held: “the legislation complained of interferes with Dudgeon’s right to respect for his private life guaranteed by Article 8.1 (ECOHHR) in so far as it prohibits homosexual acts committed in private between consenting males.” On whether this breach was justified, the majority opinion was that it was not.

The fact that the authorities in Northern Ireland had refrained in the past years from prosecuting homosexual acts in private between consenting men over the age of 21 years and capable of valid consent and that no evidence was brought to show this had been injurious to the moral standards in the country was noted by the Court.

The Court accepted that in a democratic society some degree of regulation of male homosexual conduct is necessary, but that the present legislation was totally unjustified and its very existence caused anxiety, suffering and psychological distress to homosexual men.



As a result of this ruling, in October 1982, Northern Ireland issued an order-in-council bringing the law in line with that in England and Wales.

## **Freedom of Expression and Equality**

Article 19, *Universal Declaration of Human Rights* (UDHR) and Articles 18 and 19, *International Covenant on Civil and Political Rights* (ICCPR) guarantee the freedom of thought and expression. A right to freedom of speech and expression is recognised in Article 19(1) (a) of the Indian Constitution.

Article 2 UDHR bars “distinction of any kind such as race, colour, sex, language, opinion, national or social origin, property, birth or status.” A similar right is recognised in Article 26 ICCPR, and in Articles 14 and 15 of our Constitution as interpreted by the Supreme Court.

The Siracusa Principles (UN Document E/CN.4/194/4) recognise certain limitations, which can be put in the rights in the ICCPR, but also state in the “General Interpretative Principles Relating to the Justification of Limitation”:-

“(9) No limitation on a right recognised by the Covenant shall discriminate contrary to Article 2 para 1 of UDHR.

“(10) Whenever a limitation is required in the terms of the Covenant to be ‘necessary’, this term implies the limitation, -

- (a) is based on one of the grounds justifying limitation recognised by the relevant article of the covenant
- (b) responds to a pressing public or social need,
- (c) pursues a legitimate aim, and
- (d) is proportionate to that aim.

Any assessment of the necessity of a limitation shall be made on objective considerations.

“(12) The burden of justifying a limitation upon a right guaranteed by the Covenant lies with the state.”

Attention must also be drawn to the fact that even in times of public emergency, the ICCPR prescribes in Article 4.1 that a derogation of the obligation is not allowed if involving “discrimination solely on the ground of race, colour, sex, language, religion or

social origin.” It is clear that the right against discrimination is not to be violated even in the most desperate times.

In the U.K., inspite of the 1967 amendment to the criminal law, serious onslaughts on the rights of gay men and lesbians continue. In 1986, the British government enacted Clause 28 banning the “promotion of homosexuality (as a) pretended family relationship”

Clause 25 of the Criminal Justice Bill, still under debate in the U.K., includes provisions for higher sentences for soliciting, procuring and indecency by gay men. The Children’s Bill, 1991 seeks to ban lesbians and gay men from fostering children. Clearly, merely to decriminalise is not the end of the problem

In India, the very existence of homosexuality is denied, and those who are ‘found out’ face severe ostracism and summary dismissal from their jobs. When Lila Namdeo and Urmila Srivastava decided to cement their long-standing friendship with marriage, they were dismissed from the police service without a show cause notice [See *The Lawyers*, Feb-March 1988 - reproduced in Anti discrimination chapter of this book]. Though the authorities freely vocalised their fear for “discipline” in the ranks, on paper the reason for dismissal was “absence without leave”

## Social Norms

Homosexuality has been treated in various ways by society. A sin against god, a heresy which can only be absolved by fire, a sexual deviance which must be given deterrent punishment, a mental aberration that must be treated

However, evidence is piling up that homosexuality is neither a disease nor a crime, but is inherent to human nature. The Kinsey reports on male and female sexual behaviour (1948 and 1953) concluded that homosexual behaviour was neither unnatural, abnormal nor neurotic, but that it represented as “inherent physiologic capacity”, and is found “in every age group, in every social level, in every conceivable occupation, in cities and on farms, and in the most remote areas”

To quote just one instance, a report from the Indiana Institute for Sex Research (Bell, Weinberg and Hammersmith, 1991) based on exhaustive questioning of persons of contrasting sexual orientation found that “there is no reason to think it would be any easier for homosexual men and women to reverse their sexual orientation than it would be for heterosexual (persons) to become predominantly or exclusively homosexual”

Homosexuality is as much a part of a person as is his colour, sex, race, religion, etc. This was recognised in a ruling by the US Board of Immigration Appeals in the matter of

Accosta [I.D. 2986, BIA 1985, P. 31] while interpreting the phrase “membership in a particular social group” as “sharing a common immutable characteristics . . . as innate . . . as sex, colour or kinship ties . . . It must be one that the members of the group cannot change, or should not be required to change because it is fundamental to their individual identities or conscience.” In the light of this interpretation, the Texas Immigration Court ruled that the applicant in being a homosexual was a member of such a group of persons

## **Conclusion**

Since homosexuality is an immutable part of a person's being, the state has no right to treat his or her sexual behaviour as criminal, and under Article 2 UDHR, and Article 26 ICCPR, such a person has a right against discrimination on the ground of sexual preference. It is of no use to a person to allow him a homosexual inclination, without the right to freely express this sexuality in his conduct, without fear that such expression will lead to retributive attacks on his person, his family, or his job.

The burden of proof is on the Indian state to show why Section 377 IPC is retained inspite of the fact that it is seldom used and then largely in cases of non-consensual sex with minors, and is used by the police and some sections of the public to terrorise and blackmail

The Indian State must show why social and legal controls on heterosexual behaviour cannot be extended to homosexuals, and they are given the respect and acceptance due to them.

४०४

## Are you being blackmailed, harassed or threatened with violence because you are lesbian or gay?

### BE INFORMED, PROTECT YOURSELF

#### Section 377

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years and shall also be liable for a term which may extend to 10 years and shall also be liable to fine

**Explanation:** Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

#### Under this section

1. The act of sodomy, and not homosexuality per se is a cognisable offence  
That is, evidence of anal penetration has to be proved
2. There is no distinction between coercive sex and consensual sex
3. Cases against lesbian women under Section 377 have not been known to have been registered. This is probably due to the "anal penetration requirement". However, "against the order of nature" has been loosely interpreted, and Section 377 has been used by families and police for intimidation and harassment of lesbian women.

*It is illegal to blackmail someone using Section 377 as a threat under the following Sections:*

#### Extortion - Section 389

"Whoever, in order to commit extortion, puts or attempts to put any person in fear of an accusation, against that person, or to any other, of having committed or attempted to commit an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine, and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life "

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## **Protections in the Criminal Code against Wrongful Restraint, Confinement and Assault**

### **Wrongful Restraint - Section 341**

“Whoever wrongfully restrains any person, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both”

### **Wrongful Confinement - Section 342**

“Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both

### **Assault - Section 351**

“Whoever makes any gesture, or preparation intending or knowing it to be likely that such gesture, or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.” Assault is punishable by imprisonment and/or fine

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## CAMPAIGN LETTER FOR THE REPEAL OF SECTION 377

Dear friends,

Enclosed please find a signature campaign sheet asking for repeal of Section 377 of the IPC and some background material on Sec. 377. As clearly discussed in the background material, this section punishes anybody who has 'carnal intercourse against the order of nature'. By considering only penile vaginal penetration as 'natural', it criminalises all other penetrative sexual acts. This section is based on an archaic understanding of sexuality and sexual behaviour. While it attempts to control consensual adult behaviour, it also successfully perpetuates the understanding that the only sexual interaction is that heterosexual contact which involves penetration of the vagina by the penis. All other sexual interaction is not only ignored, it is criminalised.

Today this act has been used widely in two totally different contexts. One, it has been used to fight cases of sexual assault on women and children because the existing rape law also subscribes to the same understanding of sexual interaction and defines rape as penile vaginal penetration only. In the absence of any other clause under which to seek redress, this law, which does not distinguish between consensual and non-consensual acts, is the only way out and is used accordingly. So in a sense it gives some kind of weapon to bring to book persons guilty of assault.

The other use of the law, which is more widespread, however, is against a whole group of people who are homosexual. While homosexuality has been accepted in many Indian cultures, the criminalisation of homosexuality through this section enacted by the British in 1862 has been an import from the West. In present times the State and other patriarchal institutions of this society have used this section repeatedly to harass gay men and lesbian women and the section has been interpreted to mean as a law criminalising homosexuality.

In this atmosphere of negation and criminalisation of people's sexual orientation, many women and men have suffered and have had to give up their right of being able to choose who to love and share their life with. Let alone other rights, this law threatens gay men and lesbian's basic right to exist. In our struggle for justice and equality, it is important that we fight against all violations of human rights and hence it is important that we also start looking at rights and lives of lesbians and gays.

We felt that to begin any talk of rights we had to first begin with asking for decriminalisation of homosexuality starting with repeal of Section 377. This signature campaign is a step in that direction.

The history of the public debate on the repeal of Section 377 begins soon after the release of *Less than Gay*, when a petition was moved by AIDS Bhedbhav Virodhi Andolan in the Petitions Committee of Parliament. This has, however, remained dormant till date for want of a Member of Parliament to argue the petition in parliament. Meanwhile, in 1994, media attention focused on Tihar jail where Inspector General of Prisons, Kiran Bedi, refused to allow distribution of condoms to the male prisoners on the grounds that there was no homosexual activity in the prisons, and even if there was, the prison authorities would be encouraging a crime. ABVA used this incident to initiate a public interest litigation in the Delhi High Court for the repeal of Section 377 of the IPC. The case has been pending for hearing and is slated for final hearing and judgement some time early this year.

This signature campaign is intended as a means of initiating debates within as many groups and sections of society as possible thereby creating an atmosphere of support not only for the petition but also for lesbian, bisexual, and gay rights as such. Since the issue is new and not discussed much amongst all of us, if you have any queries and questions please feel free to write to us and discuss them.

Our request to you is to collect signatures from individuals in your group and other friends around and send the sheets to us as soon as possible. While collecting signatures please take care that all signatures are on the signature campaign sheet itself, as an attached sheet of paper holds no legal validity. Do make copies of the signature campaign sheet, if necessary. If any organisation supports the demands in the petition please type the matter on the organisation's letterhead and send that too to us.

Hoping for your support and solidarity in this struggle for justice and equality.

*Forum Against Oppression of Women*

*Human Rights Law Network*

*Stree Sangam.*

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## Signature Campaign for the Repeal of Section 377 of the Indian Penal Code

Section 377 of the Indian Penal Code.

- ❖ Violates a person's liberty and privacy guaranteed by Article 21 of the Indian Constitution.
- ❖ Is arbitrary and oppressive and is therefore violative of Article 14 of the Constitution.
- ❖ Criminalises sexual practices between two consenting adults.
- ❖ Is currently being used to blackmail, harass and intimidate same sex adult partners
- ❖ Is also being used to deny prisoners access to condoms which is necessary for the prevention of HIV/AIDS, which consequently has serious implications for public health
- ❖ Is an archaic law passed under the colonial government. It was repealed in England in 1967 and most countries have repealed similar statutes.

Hence we demand its immediate repeal. We also ask for enactment of laws for addressing all cases of sexual assault and non-consensual sexual acts.

No.	Name	Individual/ Organisation	Address



## सेक्शन 377 के बारे में कुछ तथ्य

### सेक्शन 377 क्या है?

1860 में ब्रिटिशों ने इस कानून को लागू किया था. इस कानून के अनुसार :

“जो व्यक्ति अपनी इच्छा से किसी आदमी, औरत या जानवर के साथ अनैसर्गिक शारिरिक संबंध रखती है उसे आजन्म कारावास की सज़ा होगी या दस वर्ष की कैद और दंड भी हो सकता है.”

इसके साथ यह भी जोड़ा गया है कि लिंग के अंदर घुसाने की प्रक्रिया यह शारिरिक संबंध साबित करने के लिये काफी है.

यह कानून उस समय की इसाई धर्म और संस्कृति की सोच पर आधारित है और इसे अंग्रेजों की सभी कोलोनि में लागू किया गया था. इस कानून के पीछे समझ यह है कि दो व्यक्तियों के बीच शारिरिक संबंध सिर्फ प्रजनन के लिये ही होने चाहिये. इसके अलावा किया गया हर संबंध गलत माना गया है, गैरकानूनी माना गया है. इस कानून का मतलब है कि योनि के अलावा कहीं भी लिंग का घुसाना गैरकानूनी है।

चूंकि इंसानों के शारिरिक संबंध आम तौर पर इतने संकीर्ण नज़रिये से परिभाषित नहीं होते हैं, अगर इस कानून को तकनीकी रूप से लागू किया तो लगभग सभी लोग इसकी चपेट में आ सकते हैं. परंतु ऐसा होता नहीं क्योंकि इस कानून का एक मतलब ही आज अपनाया जाता है.

दो आदमियों के बीच होने वाले शारिरिक संबंध तो इस परिभाषा में ज़रूर गैरकानूनी साबित होते हैं और इसी के कारण आज इस कानून का मतलब यह निकाला जाता है कि यह समलैंगिकता के खिलाफ कानून है और इसीके चलते इसका इस्तेमाल समलैंगिक रिश्ते रखने वाले आदमियों और औरतों के खिलाफ किया जाता है. तकनीकी रूप से तो औरतों के साथ संबंध रखने वाली औरतें इसके तहत नहीं आतीं, पर उन्हें भी डराने धमकाने के लिये इस कानून का इस्तेमाल होता है. और यों समलैंगिकता के खिलाफ कानून के रूप में ही यह आज पहचाना जाता है.

इसके एक उदाहरण के तौर पर हम एक आपबीती का जिक्र करना चाहेंगे. दिल्ली में रहने वाले एक शख्स की यह जबानी है.

“मैं अपने दोस्त के साथ घूम रहा था. हम बात कर रहे थे इतने में दो पुलिसवाले हमारे पास आये. वे मुझे अलग ले गये और उन्होंने मुझसे मेरी घड़ी और सोने की चेन मांगी. मैं बहुत डर गया था. मेरे दिमाग में एक ही ख्याल था कि वे जो चाहें सो ले लें पर मुझे अकेला छोड़ दे. मुझे पता था कि अगर वे मुझे अपने साथ पुलिस थाने ले जाते तो वहां मुझ पर बलात्कार करते. वे बार बार मुझे मारने की और मुझ पर बलात्कार करने की धमकी दिये जा रहे थे. मैं बहुत डर गया और जो भी मेरे पास था वह उन्हें दे दिया, एक घड़ी और सौ रुपये. फिर उन्होंने मुझे और पैसे ले कर वापस आने को कहा.”

ऐसे न जाने कितने किस्से हर रोज छोटे बड़े शहरों में घटते रहते हैं. इक्का दुक्का घटनाओं के साथ कई बार सभी सार्वजनिक जगहों से समलैंगिक पुरुषों को निकालने की मोहिम भी की गई है. डरा धमका कर पैसे बनाने का यह एक धंधा ही हो गया है. इसमें डराये और सताये जाते हैं वे सारे लोग जो ऐसे भी समाज में प्रताड़ित हैं, जिन्हें कोई स्थान नहीं है. औरतों के साथ बाहर वालों से ज्यादा घरवाले ही इस कानून के ज़रिये समयौनिक संबंध रखने वाली औरतों को डराते हैं.

यह कानून गे लोगों को डराने धमकाने के लिये ही इस्तेमाल होता है इसका ठोस सबूत मिलता है इस बात से कि आज तक पिछले लगभग एक सौ तीस साल के इतिहास में उच्च न्यायालयों में कुल तीस मुकदमे ही दायर किये गये हैं. इसमें से

- ◆ 18 मामले ज़बरदस्ती के थे
- ◆ 8 के बारे में कुछ स्पष्ट नहीं है
- ◆ 4 मामले ऐसे थे जिनमें दोनों व्यक्तियों की मंजूरी थी और इनमें से तीन 1940 के पहले दर्ज किये गये थे
- ◆ तीस में से 15 बच्चों पर की गई जबरदस्ती के थे.

इस सारी परिस्थिति को देखते हुए यह महसूस होता है कि यह कानून ना सिर्फ़ बिनज़रूरी है, बल्कि इंसानी हकों के एकदम खिलाफ़ है. दो बयस्क लोग अपनी मर्ज़ी से अगर संबंध रखना चाहें तो सरकार को इसमें हस्तक्षेप करने का कोई हक़ नहीं हो सकता. हमारा संविधान भी हर व्यक्ति की निजी ज़िंदगी की हिफाज़त करने का अधिकार उन व्यक्तियों को देता है.

इस कानून की सोच और समझ बहुत पुरानी है. इंग्लैंड जैसे देश में भी यह कानून आज रद्द कर दिया गया है. आज यह ज़रूरी है कि हमारे देश में भी इस कानून को रद्द करके कुछ लोगों को तंग करने के इस हथियार को ही ख़त्म किया जाये.

इसके साथ ही यौनिक और लैंगिक हिंसा के सभी मुद्दों पर एक नये कानून की ज़रूरत है जो इस हिंसा की परिभाषा को ही ज़्यादा व्यापक नज़रिये से देखे. लिंग के प्रवेश के अलावा इस हिंसा में जो भी आता है वह भी उतना ही घिनौना और विभत्स है यह मान्य करना ज़रूरी है. इसके अलावा बच्चों के साथ होने वाली हिंसा को भी अलग से समझने और उस अनुसार उस पर कदम उठाने की भी सख्त ज़रूरत है. शारिरिक संबंधों के लिये हमी भरने की उम्र भी इस कानून द्वारा तय की जानी चाहिये, फिर चाहे वे संबंध समसंबंधी हों या विषमसंबंधी.

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## सेक्शन 377 को रद्द करने के लिये जापन

### सेक्शन 377

- भारतीय संविधान के आर्टिकल 21 के तहत हर व्यक्ति को दिये गये निजी स्वतंत्रता और ज़िंदगी संबंधी हकों का उल्लंघन करता है.
- कुछ लोगों के प्रति दमनकारी है और इसीलिये आर्टिकल 14 के खिलाफ है.
- दो रज़ामंद व्यक्तियों के बीच रखे गये शारिरिक संबंधों को गुनाह करार करता है.
- आज समलैंगिक और समयौनिक संबंध रखने वाली व्यक्तियों को डराने, धमकाने और परेशान करने के लिये इस्तेमाल किया जाता है.
- जेल जैसी जगहों में कैदियों को कन्डोम न मिलें इसके लिये उपयोग में लाया जाता है. कैदियों में HIV/AIDS का फैलाव रोकने के लिये कन्डोम मिलना बहुत आवश्यक है.
- देढ़ सौ साल पुराना ब्रिटिश द्वारा लागू किया गया पुरातनवादी कानून है. ब्रिटेन सहित कई देशों में इसे रद्द कर दिया गया है.

इन सब कारणों की वजह से हमारी यह मांग है कि इसे जल्द से जल्द रद्द किया जाए. इसके साथ ही हमारी यह भी मांग है कि हर किस्म की यौन हिंसा और जबरदस्ती से रखे गये सभी शारिरिक संबंधों के खिलाफ कानून बनाए जाएं.

नं.	नाम	व्यक्ति संगठन	पता

# ANTI-DISCRIMINATION

8008

Even if homosexuality is decriminalised, there is a wide range of civil laws that discriminate against lesbians and gay men. Discrimination can occur when an individual known to be (or presumed to be) lesbian, bisexual or gay is denied equal opportunity in the areas of employment, education, housing, medical benefits, access to goods and services, etc. Discrimination also occurs when same-sex couples are denied the benefits that heterosexually married couple automatically obtain (these benefits are discussed in greater detail in the next chapter). Many countries have amended their constitutions to include "sexual orientation" as an explicit clause prohibiting discrimination. Australia, for example, has amended its constitution in such a way. The new constitution of the Republic of South Africa is remarkable in that it includes a proviso protecting gays and lesbians from discrimination.

In countries, where the State provides institutions to develop policies that against individuals on the basis of employers, hospitals, schools and



The Indian Constitution under are to be treated equally before the constitution further prohibit discrimination on several grounds - including sex. However, there is no clause prohibiting discrimination on grounds of sexual orientation.

no such protection, it is possible for explicitly prohibit discrimination sexual orientation. In the U.S, many colleges have such policies.

Article 14 declares that all Indians law. Articles 15 and 16 of the is no clause prohibiting discrimination on grounds of sexual orientation.

The only known institution in India that has explicitly included sexual orientation as a ground for non-discrimination is the TISS Social Work Educators Forum in its 1997 *Declaration of Ethics for Professional Social Workers*<sup>1</sup>.

In this chapter, there are two papers - the first, reproduced from *The Lawyers* is an article written by Indira Jaising discussing the discriminatory aspects of the case of Leela and Urmila - two police women who were dismissed when it was discovered that they were lesbian. In fact, it is probably the only article that focussed on discrimination, in the wave of media coverage after the marriage of Leela and Urmila in 1988. The next paper by Mihir Desai goes further by outlining and explaining some of the civil laws in India that discriminate against lesbians and gay men. As in each section, there is also a summary of the international status of laws against discrimination.

<sup>1</sup> *Declaration of Ethics for Professional Social Workers*, Indian Journal of Social Work, Vol 58, Issue 2, April 1997, pp.337.

## “.. OR OTHER STATUS” - the international legal scenario

8003

It is the *complete absence* of reference to sexual orientation as a ground for non-discrimination in international human rights covenants, that has proved a set back for advocates of lesbian and gay rights. Even as important a document as the *Universal Declaration of Human Rights* fails to specify sexual orientation in Article 2 that states.

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or *other status*”. (our emphasis)

It is therefore left to the interpretative usage of the phrase “*other status*” that offers any hope of extending these “guaranteed” human rights to lesbians and gay men. This pattern of non-inclusion of sexual orientation is followed in all of the other major international covenants the *International Covenant on Civil and Political Rights*, the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, and the *International Covenant on Economic, Social and Cultural Rights* among others

Even the *Convention for the Elimination of all forms of Discrimination against Women* does not explicitly recognise the rights of lesbian and bisexual women. Not surprisingly then, at the Fourth World Conference on Women at Beijing in 1995, lesbian existence and rights were “bracketed” in the *Platform for Action* by countries that disputed these claims to equal rights. Despite the high level of visibility that lesbian activists achieved at the conference, sexual orientation language was not included in the final document. However, the document does include recognition that women and men must be able to decide freely on all matters relating to their sexuality free from coercion, discrimination and violence. Israel, South Africa and the United States have indicated that they interpret language in the *Platform for Action* to advocate human rights protections for all women, regardless of their sexual orientation.<sup>2</sup>

It is heartening to note that, in recent years, there have been positive interpretations of the “other status” clause in the implementation of these international covenants. For example, the *European Commission on Human Rights* issued a ruling on October 7, 1997 determining that the United Kingdom’s unequal age of consent (18 for gay men and 16 for heterosexuals and lesbians) is discriminatory against gay men. The Commission ruled that “there is no objective and reasonable justification for the maintenance of a higher minimum age of consent for male

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<sup>2</sup> IGLHRC *International Jurisprudence and Policy Precedents Regarding Sexual Orientation*, April 1997

homosexual, than for heterosexual, acts and that the application discloses discriminatory treatment in the exercise of the applicant's right to respect for private life under Article 8 of the [European] Convention." The UK parliament has yet to effect the change, since the House of Commons has passed the motion, but the House of Lords stalled it in July 1998.

Nevertheless, lesbian and gay rights advocates in Europe are working to get the UK judgement automatically applied to the other member states of the Council of Europe, that still have age of consent laws similar to the one in the United Kingdom - i.e., in Austria, Bulgaria, Croatia, Estonia, Finland, Hungary, Latvia, Liechtenstein, Lithuania, Moldova, Portugal, Romania, and Ukraine<sup>1</sup>

Recent legislation prohibiting discrimination against lesbians and gay men includes the Tokyo High Court decree on September 16, 1997, that Tokyo's Board of Education discriminated against the Japan Association for the Lesbian and Gay Movement (OCCUR) in 1990 by refusing to allow its members in a city-run youth hostel. The High Court decision reaffirmed a similar ruling by the Tokyo District Court in 1994. The High Court ruled that when a governmental agency "performs its duties, it is obligated to pay careful attention to the situation of homosexuals as a minority and to guarantee that their rights and interests be upheld. Indifference and ignorance regarding homosexuality are inexcusable on the part of persons in the position of wielding governmental authority."<sup>4</sup>



Another landmark judgement has been in the US in the case of *Romer v. Evans*. In November 1992, under pressure from the conservative lobby, Colorado took the unprecedented step of amending the state constitution to prohibit state and local governments from enacting any law, regulation, or policy that would protect the civil rights of gays, lesbians, and bisexuals.

The amendment, known as Amendment 2, did not go into effect, as a lawsuit was filed challenging the constitutionality of the new provision.

*Romer v. Evans* (U.S., 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996)) reached the U.S. Supreme Court and, in a significant though controversial decision, the Supreme Court struck down the amendment as unconstitutional. Justice Anthony M. Kennedy declared that the Colorado provision violated the Equal Protection Clause of the Fourteenth Amendment. The Court found that the amendment did more than repeal state and municipal gay rights laws. The amendment prohibited "all legislative, executive or judicial action at any level of state or local government designed to protect... gays and lesbians." Under this provision, the only way gay men and lesbians could secure their civil rights was through amendment of the state constitution. Judge Kennedy concluded: "[it] is not within our constitutional tradition to enact laws of

<sup>1</sup> ILGA Euro-Letter No.60, Jun 1998

<sup>4</sup> IGLHRC. 1997 *the Year in Review*

this sort.” According to the judge, the Colorado amendment classified gay men and lesbians “not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do.”

The *Romer* decision was a major advance for gay and lesbian rights in the U.S. The Supreme Court ruled that states cannot use a broad brush to limit civil rights. The political process cannot be changed to prevent gay men and lesbians from using the political and legal tools available to all citizens.

Discrimination against lesbians and gay men in the armed forces is another long battle that has been fought in the U.S., with several lawsuits filed that sought to overturn military regulations that mandated discharge for disclosing a homosexual orientation. In *Meinhold v. United States* (Department of Defence 34 F3d 1469, 9th Cir. 1994), a three-judge panel ruled that Petty Officer Keith Meinhold, of the U.S. Navy, could not be discharged for stating on a national television broadcast that he was gay.

President Bill Clinton’s policy (dubbed “don’t ask, don’t tell”), in the initial years, compromised on his pre-election commitment to the lesbian and gay electorate. With this policy, gay men and lesbians were directed to keep their sexuality hidden if they intended to pursue a military career. However, in May 1998, President Clinton signed an Executive Order prohibiting discrimination based on sexual orientation in the federal civilian workforce. The Executive Order ensures that all federal agencies ban employment discrimination based on sexual orientation. Many, but not all, U.S. federal agencies currently have some form of policy prohibiting sexual orientation discrimination. This Executive Order adds sexual orientation to the list of categories (race, colour, religion, sex, national origin, handicap, and age) for which discrimination is prohibited.

The U.S. now joins the following list of countries: Australia, Austria, Belgium, Canada, Denmark, Finland, Israel, Ireland, the Netherlands, Norway, Spain, Sweden and Switzerland – that do not discriminate against lesbians and gay men in the Armed Forces. Discrimination in the armed forces is about to end in New Zealand.

### **Country-wise Summary of Anti-Discrimination Protections<sup>5</sup>**

There are 14 countries which have explicit provisions prohibiting discrimination on the grounds of sexual orientation in their national legislation (details in the following table). Several other countries – like the U.S., Australia, and the U.K. may have state specific legislation. There are also, within countries – other institutions like companies, schools / colleges, hospitals etc. which may also include anti-discrimination protections.

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<sup>5</sup> IGLIRC – Fact Sheet: Nations with Legal Protection from Discrimination Based on Sexual Orientation, March 1997.

### Protections Against Discrimination on the basis of Sexual Orientation

Country	Year & Legislation	Features
Norway	1981 Amendment of Penal Code	<ul style="list-style-type: none"> <li>• Prohibition of discrimination in provision of goods and services</li> <li>• No discrimination in access to public gatherings</li> <li>• Prohibition of hate speech directed at sexual minorities</li> <li>• Private labour market not covered by these protections</li> </ul>
France	1985 Amendment of Penal code 1986 & 1990 Amendment of Code of Labour Law	<ul style="list-style-type: none"> <li>• Prohibition of discrimination based on sexual orientation - in the workplace (including civil services and armed forces)</li> </ul>
Sweden	1987	<ul style="list-style-type: none"> <li>• Prohibition of discrimination by commercial organisations</li> <li>• Prohibition of hate speech</li> <li>• Private labour market not covered by these protections</li> </ul>
Denmark	1987 Amendment of Penal Code and Anti-discrimination Act	<ul style="list-style-type: none"> <li>• Prohibition of discrimination in the workplace (public and private labour market)</li> </ul>
Ireland	1989 Prohibition of Incitement to Hatred Act 1991 Employment Discrimination Law	<ul style="list-style-type: none"> <li>• Prohibition of hate speech</li> <li>• Prohibition of discrimination in the workplace</li> </ul>
The Netherlands	1991 Amendment of Penal Code	Prohibition of discrimination in <ul style="list-style-type: none"> <li>• the workplace</li> <li>• provision of goods and services</li> <li>• education</li> </ul>
Israel	1992 Anti-discrimination law 1994 Supreme Court judgement in favour of equal employment benefits for same sex partners	Prohibition of discrimination in the workplace



Country	Year & Legislation	Features of Anti-discrimination legislation
New Zealand	1994 Amendment to the Human Rights Act includes sexual orientation as a protected category	Prohibition of discrimination in <ul style="list-style-type: none"> <li>• Employment</li> <li>• Access to public places</li> <li>• Housing and accommodation</li> <li>• Provision of goods and services</li> <li>• Education</li> </ul>
Finland	1995 Amendment of penal code to include sexual orientation as a protected category	Prohibition of discrimination in <ul style="list-style-type: none"> <li>• Employment</li> <li>• Provision of public or commercial goods and services</li> </ul> The law also bans agitation against protected groups
Slovenia	1995 Amendment of penal code to include sexual orientation as a protected category	
Spain	1995 New Penal Code	Bans discrimination in <ul style="list-style-type: none"> <li>• Housing</li> <li>• Employment</li> <li>• Public services</li> <li>• Professional activities</li> </ul> The law also criminalises hatred and violence directed at homosexual persons and organisations
Canada	1996 Amendment of Canadian Human Rights Act to include sexual orientation as a protected category	Bans discrimination in federally regulated <ul style="list-style-type: none"> <li>• Housing</li> <li>• Employment</li> <li>• Public services</li> <li>• Professional activities</li> </ul>
Iceland	1996 Amendment to the penal code	Prohibits <ul style="list-style-type: none"> <li>• Defamation</li> <li>• Discrimination in access to goods and services</li> </ul>
South Africa	1996 Section Nine of the new Constitution's Bill of Rights includes sexual orientation as a protected category	Prohibits discrimination by the government and by private sector.

## Gay Rights

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*Indira Jaising*

*(reproduced from **The Lawyers**, February-March 1988)*

*The rights of gay people, is a subject little mentioned, leave alone discussed in this country. In fact, until the marriage of Urmila and Leela, two women constables from the M.P. Police Force was announced, the subject of homosexuality was hardly mentioned in the media much less has it come up for decision before our courts. Indira Jaising discusses the law on this 'taboo'.*

**T**he victimisation of Leela and Urmila (for that is what their discharge from the police force amounts to) should prove the occasion to discuss the rights of gays. On record, Leela and Urmila have been discharged from the police force for unauthorised absence from duty. However, it seems clear that the real reason for their removal from service is the fact that they were lesbians and announced that they married each other. What is the legal position regarding this question?

Apart from Section 377 of the India Penal Code, which criminalises deviant sexual behaviour, there is no other law in India that deals specifically with homosexuality. Section 377 however does make it an offence to have voluntary carnal intercourse against the order of nature with any man, woman or animal.

### Law in U.S.

Not all countries have criminalised homosexuality. For example, in the United States, in several states there is nothing unlawful or criminal about being a homosexual. However, the law in the United States is not uniform. While in several states there is nothing unlawful about homosexuality, in certain other states, specific sexual acts between persons of the same sex are considered unlawful. These acts, (e.g. rape) would however also be considered unlawful between persons of the opposite sex. Other states have gone to the extent of enacting legislation to ensure that there is no discrimination against homosexuals in matters of employment, housing accommodation, property rights, education and health. Unfortunately there is no corresponding legislation in India. On the contrary, discrimination, both covert and overt is regularly practised.

## **Law in India**

The marriage of Urmila and Leela raised the question whether in India women can be discriminated against in public employment on grounds of being lesbian.

To begin with, it must be noted that although most marriage laws do not specifically state that a valid marriage is one between opposite sex only. Hence no valid to the same sex can be registered under the Special Marriages Act or Act. The status of the marriage cannot be considered to be a legal their union unlawful. So far as the considered to be two people living of the opposite sexes living together legal validity of their marriage would be argued that Leela and Urmila have a guaranteed fundamental right under the Constitution to live with each other and there is nothing in Indian law that would criminalise such a marriage.



members of the opposite sex, yet it marriage between members of the marriage of two persons belonging under the Hindu Marriages Act or under the Indian Marriages between Urmila and Leela therefore one. This however does not make law is concerned, they will be together, just as any other two people would be. For Urmila and Leela, the be of very little relevance. It could

## **Gay Marriages**

In the United States, gay couples have often applied for a marriage licence, which has been refused. The United States Supreme Court has yet to rule on this question viz. whether a licence can be refused for marriage between gays. They have challenged the refusal to grant a marriage licence on several grounds viz. that refusal amounts to violation of their important right to freedom of association and that it is an invasion of their privacy. Decisions such as whether to use contraceptives or not, whether to have an abortion or not have also been protected by the right to privacy. Gays argue that their decision to choose with whom they have sexual relations must also be protected from needless government interference.

The gay family is not an unknown phenomenon in other countries. Lesbian mothers have had to fight protracted battles, often in court to gain custody of their children. Sometimes they have succeeded, as the fact of being a lesbian does not disentitle them to the care and custody of their children. Sometimes however they have been unsuccessful. Some courts have taken the view that a lesbian mother is not unfit to have custody of her child simply because she is gay. The Supreme Court of the United States had held that there is no conclusive presumption that an unwed father is not entitled to the custody of his child and it is impermissible to presume as a matter of law, that all unwed fathers are incompetent

parents. The decision must also be applicable to unwed mothers. It must also follow that it is impermissible to presume that all lesbian mother or gay fathers are unfit parents.

## **Public Employment**

Public employment in India constitutes a major source of employment. The Constitution of India while guaranteeing equality before law, explicitly guarantees equality of opportunity in matters of employment and prohibits discrimination on grounds of sex. The discharge of Urmila and Leela from the M.P. police force raises the legitimate question as to whether they have been discriminated against in the matter of public employment by the State. None of the numerous rules and regulations of service in the State Governments or the Central Government define homosexuality as an act of misconduct. Thus, the Madhya Pradesh Government can justify the dismissal of Urmila and Leela only by accusing them of violating the notorious, catch-all clause of being guilty of "conduct unbecoming of public servants".

There has been much litigation in the US on discrimination against gays and denial of employment opportunities on the ground of their homosexuality. However, to dismiss or discharge or deny employment to homosexuals on the mere ground that he or she is gay would be a clear denial of equality before law and would call for the protection of law in the matter of public employment. It could be successfully argued that there is no nexus between the fact of being gay and the employment in question. If an employee's conduct does not interfere with the effective performance of his or her job, the discharge or dismissal would be a clear act of victimisation.

The struggle for gay rights has been long and continuous. There is no doubt that Urmila and Leela will also face societal prejudices both outside and inside court. However, the struggle against the discharge from public employment of Urmila and Leela will at least provide the starting point of a long legal battle for the rights of gays. The case, it and when it goes to court, will be a major trendsetter not only on the rights of gays but also on discrimination in public employment.

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## Civil Laws Affecting Gay men and Lesbians

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*Mihir Desai*

*India Centre for Human Rights and Law*

*Paper presented at workshop on "Strategies for furthering lesbian, gay  
& bisexual rights in India", Mumbai, 1997.*

**T**he major debates and discussions concerning the law affecting gay men and lesbians in India centres around Section 377 of the Indian Penal Code which criminalises male homosexuality. However, the present paper seeks to explore other laws that discriminate against gay men and lesbians. Apart from Section 377 of the Indian Penal Code (and the Armed Forces Acts), no other laws directly deal with homosexuals. It is as if homosexuality does not exist in India at all. Because of this ostrich like attitude there is no overt discrimination against gay men and lesbians. The covert discrimination against homosexuals, however, runs throughout the gamut of laws. This operates at two levels. First, the family law regime is based entirely on heterosexual premises. Under all systems of personal laws, marriages can only be between persons of opposite sex. Succession and property rights are based either on blood relations or relations by marriage. Secondly, all laws (outside the confines of family laws) concerning entitlement to assets upon death of a person are also based exclusively upon heterosexual premises confined to relations by marriage and blood. Thirdly, because of the moral stigma attached to homosexuality per se, gay men and lesbians are affected by a number of laws that criminalise actions and other objects considered as immoral or scandalous according to the governing ethics of society.

### Criminal Laws: other adverse effects of Section 377 of the Indian Penal Code

Criminalisation of male homosexuality under Section 377 of the Indian Penal Code has the potential of leading to many adverse spin-off effects beyond prosecution under the section itself.

- a) Even though lesbianism is not explicitly criminalised, it is very easy to treat it as something immoral or depraving or indecent; and this can have major impact on lesbians.



- b) **Section 292 of the Indian Penal Code** punishes obscenity and makes it a criminal offence. The current definition of obscenity can lead to its misuse against gay and lesbian writings.

Section 292 (1), which defines obscenity states:

“(1) For the purposes of sub-S (2) a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect or, (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.”

As male homosexuality is a criminal offence, the presumption is that it is something depraved and can corrupt minds and bodies of persons. Any writing or painting on gay issues can be banned by branding them as obscene. Thus, even without criminalising it is very easy to treat homosexuality as something immoral or depraved or

indecent; and this can have major impact on gay men and lesbians and issues related to them. It is therefore not enough to decriminalise homosexuality. This by itself will not put an end to the legal woes of gay men and lesbians. Simultaneously it is necessary to fight for legal and moral recognition of gay and lesbian relations.

The arbiters of social decency and morality are lurking in unsuspected corners of the law. In October 1997, the Customs department of Calcutta confiscated a consignment of copies of **Trikone** magazine on grounds that it attracted the provisions of the Customs Act, 1962. (**Trikone** is a magazine for lesbians, gays and bisexuals from South Asia published in the U.S and distributed in India through Counsel Club in Calcutta and the Humsafar Trust in Bombay). The allegation of the Customs department was that the magazine is “derogatory to the morality and social system of our nation”. Section 11 of the **Customs Act**, 1962 allows the Central Government to ban the import of any goods to India which affect the “standards of decency or morality”.

- c) **The Dramatic Performances Act, 1876** empowers the State to ban any play which — according to it — is scandalous or is likely to deprave the spectators. A gay or lesbian play can easily be banned under this provision. Similar is the case with books and periodicals.
- d) Under the **Indecent Representation of Women Act, 1986**, indecent representation of women is defined as depiction of the figure of a woman or her body which is likely

to deprave or corrupt public morality or morals. Any book, photograph or picture, which contains such indecent representation in any form, can be banned

- e) The **Juvenile Justice Act, 1980**, deals with neglected juveniles and juvenile delinquents. The State has the power to take away a 'neglected juvenile' from the care of parents and put the child in a childcare home. What is of crucial importance is the definition of neglected juvenile. The law defines a neglected juvenile one whose parent or parents are 'unfit' or associate with a person who leads an immoral or depraved life. This definition is potentially dangerous for gay and lesbian couples who may be bringing up one or the other's child. **By using the argument of Section 377 or even independent of it, it can be claimed that a gay or lesbian parent is unfit as he or she is depraved, and leading an immoral life.**

We shall now have a look at some of the non-criminal laws that affect gay men and lesbians.

## Labour Laws

Under all labour and service laws, being convicted of an offence involving moral turpitude is treated as a major misconduct punishable with dismissal from service. Under certain laws it is not even necessary for a person to be convicted for moral turpitude but a mere opinion of the employer that an employee is guilty of moral turpitude is enough reason for the employee to lose his or her job. **Moral turpitude is defined as anything that is shocking by the present moral standards of society; and in many cases adultery has already been held to be an offence involving moral turpitude. Employers can easily consider homosexuality to be an offence involving moral turpitude and this would be a constantly hanging sword over employees** and would also prevent them from openly declaring or discussing their sexual orientation.

Various benefits are available under the Labour laws to heirs and legal representatives at the time of death of the employee. Due to the scheme of these Acts, a relationship that is not based on blood or marriage is not recognised for entitlement to these benefits. Some of the provisions of the relevant labour laws are listed below:

### 1. Employees' Provident Fund Scheme, 1952

Under this Act and Scheme an employee is entitled to claim a Provident Fund upon retirement/ resignation/ termination. The employee can nominate a person who will receive the Provident Fund in case of his/ her death.

Regulation 61, which deals with nomination, reads.

“(3) If a member has a family at the time of making a nomination, the nomination shall be in favour of one or more persons belonging to his family. Any nomination made by such member in favour of a person not belonging to his family shall be invalid.”

Regulation 2(g) defines family.

“Family means,

In the case of male member, his wife, his children, whether married or unmarried, his dependent parents and his deceased son's widow and children. . .

In the case of a female member, her husband, her children, whether married or unmarried, her dependent parents, her husband's dependent parents and her deceased son's widow and children . . .”

**Thus, a gay or lesbian couple cannot nominate his or her companion for receiving the Provident Fund. Besides, under the Provident Fund Act, if no nomination is made, the Provident Fund will go to heirs as per the personal laws. As a result, even here, a gay or lesbian couple loses out.**

Similarly, under the Employees' Family Pension Scheme, pension is payable only to 'family' members as defined through blood and marriage relationships.

## **2. Payment Of Gratuity Act, 1972**

The situation is similar under the Gratuity Act, which deals with payment of gratuity to an employee at the time of his or her retirement/ termination/ death.

Nomination can be made by the employee and the nominee is to receive the gratuity if the employee dies.

Section 6 deals with nomination and reads:

“(3) If an employee has a family at the time of making a nomination, the nomination shall be in favour of one or more persons belonging to his family. Any nomination made by such employee in favour of a person not belonging to his family shall be invalid”

Here again, “family” is defined by blood and heterosexual marriage.

S. 2(h) defines 'family'.

'family' in relation to an employee, shall be deemed to consist of



- in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and widow and the children of his predeceased son, if any,
- in case of a female employee, herself, her husband, her children whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any . .”

### **3. Workmen’s Compensation Act, 1923**

This Act provides that in case of death caused by injury at the work place, dependants of an employee are entitled to receive compensation from the employer. At a superficial level this appears to be a major departure from other laws, in that, the entitlement to compensation is based on dependency. However, the bias of the law is exposed in its definition of ‘dependants’.

“ ‘Dependent’ means any of the following relatives of a deceased workman, namely

“a widow, a minor legitimate son, an unmarried daughter, or a widowed mother, and, if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm ...”

### **4. Employees’ State Insurance Act, 1948**

This Act deals with medical aid and benefits to employees. Not just the employee but even his/ her family members are entitled to receive subsidised medical treatment from ESI doctors and hospitals. As in other labour laws, ‘family’ is defined in a very restricted manner to include only relationships by blood or marriage.

Under this Act, if death is caused due to employment injury, the dependants of the employee are entitled to compensation. Here again, ‘dependants’ are defined in a very narrow manner to only include relations by blood or marriage.

## **Insurance Laws**

### **1. Insurance Act, 1938**

This is the Central law dealing with insurance policies including life insurance policies. While purchasing a policy the insured person is required to give the name of his/ her nominee. Under Section 39 of the Act, the insured person can nominate any person irrespective of whether he or she is a legal representative. This clause is a very pleasant

departure from other laws dealing with nominees since it allows any one to be nominated for the policy amount. However, owing to judicial interpretation, any potential use of this law by gay men and lesbians has been nullified. Various High Courts as well as the Supreme Court have repeatedly held that a nominee only acts as an agent for the legal heirs of the deceased person. Thus, the nominee is only meant for collecting the insurance money but the money actually belongs to the heirs and has to be paid over to the heirs.

## 2. **Public Liability Insurance Act, 1991**

This Act provides for compensation for the public at large (non-workers) regarding accidents arising out of handling hazardous products. However, in the case of the death of a person only his/ her legal representatives are entitled to claim the insurance amount.

## **Housing Laws**

Laws concerning housing are State laws and vary from one State to another. Merely by way of example we have dealt with the housing law in Maharashtra. Houses can either be owned or be rented. Most of the houses in urban agglomerations, which are owned are in housing co-operative societies. These are governed by the Maharashtra Co-operative Societies Act, 1960. Any person can buy a flat in a society and become a member. **It is similarly possible for two persons (whether related or not) to jointly buy a flat in a society and become the member and associate member. In such a case both persons have equal rights to the flat. Thus, it is possible for a gay or lesbian couple to jointly purchase a flat in a co-operative society.**

If a flat in a society stands singly in the name of a person, under Section 30, she/he can make nomination in favour of any person of his/her choice. Nomination is with a view to ensure smooth transition after the death of the flat owner. However, here again, nomination is merely for the purposes of facilitation and does not create any rights in favour of the nominee as she/he acts only as the agent for the heirs. Similarly, under the Bombay Rent Act, 1947 on the death of a tenant, the tenancy passes to the tenant's heirs. **A gay or lesbian tenant cannot even will away the tenancy to his or her companion.**

## **Conclusion**

We have only given a representative sample of the status of gay men and lesbians under the Indian laws. The same bias runs through the gamut of the entire legal structure.

What stops homosexual couples even today from entering into a contract which protects their rights?

First, the central civil law problem facing gay men and lesbians today is that they do not fall within the definition of 'family' and are not considered 'heirs' under law. Any individual's status as a member of a family or as a legal heir or dependent does not depend on contract but on law. Contract cannot change this status.

Second, under Section 23 of the Indian Contract Act any contract or agreement for an object forbidden by law or considered immoral or opposed to public policy is considered an unlawful and void agreement, giving no legal rights.

It is quite clear that, in terms of laws, the following need to be done and fought for simultaneously:

- Homosexuality must be decriminalised.
- Gay and Lesbian relations should be treated as 'moral' relations and not something that is depraving, corrupting or scandalising.
- It is equally important to fight for legal acceptance of gay and lesbian companionships as constituting families. This can only be done by either amending the existing family laws or by providing a separate law legitimising contracts amongst gay men and lesbians which gives the couples quasi-marital rights. It is also important to have a law which cuts across all the existing laws and redefines the phrases 'family', 'heirs' and 'legal representatives' to include gay and lesbian companions.

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## DOMESTIC PARTNERSHIPS

8008

**I**n interesting contrast to other countries, in India, the demand for same-sex marriages has come most forcefully from women. All the cases of same-sex marriages reported in the media have been those of women seeking to find a means to validate their relationships. In 1988, it was Leela and Urmila in Bhopal; in 1998, it was Sweta and Summi in Patna<sup>1</sup>. This is even more remarkable when one considers



how compulsory heterosexual marriage is for women in India. The “legality” of the contract these couples have attempted to forge varies - from the customary exchange of garlands in a temple, to undertaking *matri karar* (a quasi legal friendship contract), to filing a signed and witnessed affidavit (stating they are married) with the court, or even, attempting to get the registrar of marriages to issue a license. Besides the women who have had the courage to declare their love publicly in order to live together, several other pairs of women in the intervening decade have been reported as running away together, undergoing sex change operations in order to be together or, sometimes, tragically making suicide pacts together rather than be separated.

Further, it has been a women’s group - *Forum Against Oppression of Women (FAOW)* that has taken the initiative in broadening the definition of family and articulating a framework for same-sex marriages within the context of family laws in India. In challenging the patriarchal, heterosexual definitions of the family, FAOW is one of the few women’s groups to actually draft an alternative vision of marriage, and the only group to explicitly include lesbian and gay relationships as valid companionship contracts.

It has been argued - both in India and elsewhere - that as long as lesbian and gay relationships are not criminalised, there is no need to go to the extent of providing for same-sex marriage contracts. The reasons why it is perceived as unnecessary vary depending on the context, and the political perspective. For instance, in India, many progressive groups and

<sup>1</sup> *Girls tie the knot to turn man and wife* - Sanjay Jha, 20th April, 1998. Times of India, (Patna edition)

individuals believe that the existence of strong homo-social spaces and the relative tolerance of homosexuality in our societies, precludes the need for same-sex marriages.

In countries where proposals for same-sex marriage are being publicly debated - like the US - there is the expected opposition from conservative and religious groups. There are also lesbians and gays who are not in favour of same-sex marriages and there has been much debate on the issue.<sup>2</sup> Ultimately though, the critical question is whether an individual has *the choice* of entering a same-sex marriage in society. He or she may individually choose not to - but for those who wish to, does the choice exist, and does it offer rights and benefits equal to heterosexual marriage?

In the absence of equal marriage rights, lesbian and gay couples are excluded from the automatic rights, privileges and benefits society attaches to a marriage contract - no joint custody and adoption rights; no health insurance coverage, or other employment benefits usually extended to spouses, no joint tax returns; no survivor benefits; no rights to immigrate as a lesbian or gay partner; no guardianship rights - as Karen Thompson of Minnesota, U.S.A, found out most painfully, when a 7-year court battle did not grant her guardianship of her partner Sharon Kowalski who had become quadriplegic in an accident.

Registered partnerships that have been implemented in some countries and cities go part of the way toward covering this huge gap in rights. As yet, however, there is no country that can claim to confer fully equal legal status to homosexual couples.

FAOW's paper is included in this chapter, along with the *Danish Partnership Act* as prototypes of possible marriage contracts for same-sex couples. Before that, however, here is a brief run-down of the international status on domestic partnerships.



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<sup>2</sup> Refer *Same Sex Marriage: Pro and Con - A reader*, ed. Andrew Sullivan, Vintage Books, New York: 1997. Also refer to Select Bibliography (legal issues section) in this volume for more titles on the debate.

## RIGHTS TO MARRIAGE - the international legal scenario

8003

**D**enmark was the first country to introduce domestic partnership legislation for same-sex couples with the introduction of the *Danish Partnership Act* in 1989. The other Scandinavian countries followed the Danish example almost immediately. By 1995, these countries recognised each other's Acts.

The limitations of domestic partnerships as defined so far in the Scandinavian countries is that first, of course, they indicate *legal* and *not religious* sanction. Second, and more importantly, they are not the legal equivalent of heterosexual marriage, since they impose restrictions on immigration and on adoption. Adoption of a child is possible only in heterosexual marriage. Although an individual can adopt, i.e. legally be a single parent, the same-sex partner cannot become co-guardian.

This restriction is being reviewed in the Netherlands<sup>3</sup> where, the Cabinet is proposing that joint custody should be granted automatically if the child is born within a registered partnership. In the Netherlands, the law on registered partnership (in fact a complex of several laws amending the Civil Code and more than 100 other statutes) came into operation on 1 January 1998. Same-sex and different-sex couples can now have their partnership registered. However, pension entitlements, joint authority and custody rights over children, adoption of foreign children, and the language of "marriage", "spouse", "wedding" - are not allowed in registered partnerships yet. Due to several errors, however, there are already proposals for revisions in this law, though these may not get implemented till the next century.

The first legally married gay couple in the world under the *Danish Partnership Act* were Axel and Eigil Axlil, who married together with 10 other couples in Copenhagen, 1 October, 1989. It was a worldwide media event. At the time of the marriage, the Axlils had been together for nearly 40 years, 32 of which were lived under a common name. Axel and Eigil had in 1957 combined their first names into the family name Axlil when they were in prison for gay rights activism.

<sup>3</sup>Kees Waaldijk, ILGA Euro-Letter No.57, Feb 1998

In a pioneering effort in Brazil, gay and lesbian rights advocates initiated a bill in Parliament for a Partnership law in August 1997. The bill ensures rights to inheritance, succession, welfare benefits, joint-income declaration, right to nationality in case of a foreign partner and joint income in order to buy a house. If approved, the law will possibly serve as an important precedent for the whole region, stimulating similar changes in other Latin American and Caribbean countries.

The history of attempts in the U.S. to register same-sex marriages in court begins in the early 1970's. In the first major decision dealing with the issue, *Baker vs Nelson*, two men filed a suit after a courthouse clerk declined to issue them a marriage license because they were of the same sex. The Minnesota Supreme Court first held that the language of the state marriage statute precluded same-sex marriage because marriage, by definition, involves a man and a woman. This circular argument "marriage by definition involves a man and woman because that's how we've defined it" has been used - along with biblical quotations - quite frequently in the subsequent years in different states where gay men and lesbians have filed for marriage licenses. Ironically, now lesbians and gay men can marry only in religious ceremonies performed by clergy, who do not find such unions of love sinful.

In another noteworthy example, a complaint to the Illinois Department of Human Rights by two men who said they wanted to get married was dismissed because "sexual preference is not a protected class" under the Illinois Human Rights Act. Journalist Rex Wockner and activist Paul Varnell filed the test case complaint, after the Cook County Clerk and the State Attorney General's office told them they could not have a marriage license. **They appealed the decision, with the new argument - possibly for the first time ever - that the discrimination they encountered was not on the basis of sexual orientation, but rather on the basis of sex, since homosexuals are permitted to marry each other in Illinois as long as one of them is a male homosexual and the other a female homosexual!**

Although the Wockner case was unsuccessful, the argument of discrimination on the grounds of sex was used again in Hawaii, when the issue of same-sex marriage exploded into mainstream public attention - both in the U.S. and internationally. The Hawaii Supreme Court in *Baehr vs Lewin* (74 Haw. 530, 852 P.2d 44 (1993)) ruled that the state must show a compelling interest in order to ban same-sex marriages, since the prohibition of such marriages violated the state constitutional ban on gender discrimination. Though the court did not make a final ruling on the issue, it sent the case back to the lower court with instructions to apply the highest level of constitutional scrutiny to Hawaii's marriage law. The trial court found in *Baehr vs Muke*, (1996 WI. 694235 (Cir. Ct. Haw. No. 91-1394, Dec 3, 1996)) that the state had failed to establish such a compelling state interest. In effect, this meant same sex marriages were legal in Hawaii.

The backlash to this judgement from the right wing, conservative forces in the U.S has been enormous. Congress responded in 1996 with the introduction of the *Defence of Marriage Act* (H.R. 3396, 104th Cong., 2d Sess.) or *DoMA*. The bill denies certain federal benefits and entitlements to same-sex marriage partners by defining marriage as a union between a man and a woman. It also allows states to ban same-sex marriages within their borders, and to not recognise such marriages performed in other states. Critics of the bill argued that Republicans were pushing it for political purposes. Yet on September 10, 1996, the Senate passed *DoMA* by a vote of 85/14, and on September 21, 1996, Democratic President Clinton signed the act into law.

A state by state battle was begun in the U.S., where, according to a report issued by *Lambda Legal Defence and Education Fund*, as of September 4, 1996, 15 states have passed anti marriage bills. Intense lobbying by the lesbian and gay community has prevented anti marriage bills from advancing in the other states.

The challenges to the anti gay-marriage laws continue. In February 1998, echoing the Hawaiian judgement, an Alaskan Superior Court judge ruled against Alaska's ban on same sex marriages, ordering the state to show why it should be able to regulate who people marry. An Anchorage gay couple of almost 20 years, Jay Brause and Gene Dugan, filed a suit against the ban passed by the Alaskan legislature in 1996. The ruling does not legalise same-sex unions in Alaska, but forces the state to prove a compelling reason why such unions should be illegal. Superior Court Judge Peter Michalski said "*choosing a partner is a fundamental right and the State Constitution protects both the traditional choice and the non-traditional choice.*"

**V**IENTNAM, Hanoi - Vietnamese officials have extracted a written promise from two women who married each other that they will never again live together.

Cao Tien Duyen, 23, and Hong Kim Huong, 30, got married on 7 March in a large public ceremony in the Mekong Delta city of Vinh Long. Vietnamese law does not ban same-sex marriage.

The relationship reportedly ended on 23 May after a Justice Ministry-

ordered meeting at their home with 20 officials from Communist Party groups. Local newspapers did not say what kind of persuasion was used or what will happen if they violate the agreement. A spokesperson for the provincial justice department told reporters the women "would have had no trouble with their relationship if they had not chosen to have a public wedding."

*Melbourne Star Observer*, 05 June 1998 page 3 (ated on *GayLawNet* - *GayLawNews* June 1998)



Conferring limited rights to lesbian and gay couples in the U.S., domestic partnership legislation has been enacted in New York City, Madison in Wisconsin, Takoma Park in Maryland; Berkeley, San Francisco, and Santa Cruz, West Hollywood, Palo Alto in California. Each of these states/cities has variations in the extent of benefits available under such legislation. In general, however, the benefits of probate and tax law are denied to same-sex couples. For example, if a partner in a same-sex relationship dies, under law, the surviving partner is not entitled to any of the deceased's property, unless the deceased provided for such an entitlement in a will.

Several companies and other institutions in the U.S. have also formulated policies that recognise domestic partners when they issue employment benefit policies, housing, health insurance, etc. Some examples of state agency recognition of same-sex relationships include some of the following. New York's state housing authority extended the definition of "family members" to include gay couples in matters concerning rent regulated apartments (1993). In another more recent example, the city of Sacramento introduced legislation in 1998 to allow domestic partners to qualify for California's Family Care and Medical Leave Act.

A growing number of private employers are also offering a wide range of domestic partnership benefits. In 1982, the *Village Voice* in New York was the first - today, 23% of companies employing more than 5000 workers provide health benefits to non-traditional partners. Some of the big names include IBM, Microsoft, Prudential Insurance, Time Warner, Lotus Development Corporation, Xerox, Home Box Office, etc.



## The Danish Registered Partnership Act

§§§

WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, do make known that:-

The Danish Folketing has passed the following Act, which has received the Royal Assent.

1. Two persons of the same sex may have their partnership registered

### **Registration**

2. (1) Part I, sections 12 and 13(1) and clause 1 of section 13(2) of the Danish Marriage (Formation and Dissolution) Act shall apply similarly to the registration of partnerships, cf. subsection 2 of this section.  
(2) A partnership may only be registered provided both or one of the parties has his permanent residence in Denmark and is of Danish nationality.  
(3) The rules governing the procedure of registration of a partnership, including the examination of the conditions for registration, shall be laid down by the Minister of Justice.

### **Legal Effects**

3. (1) Subject to the exceptions of section 4, the registration of a partnership shall have the same legal effects as the contracting of marriage.  
(2) The provisions of Danish law pertaining to marriage and spouses shall apply similarly to registered partnership and registered partners.
4. (1) The provisions of the Danish Adoption Act regarding spouses shall not apply to registered partners.  
(2) Clause 3 of section 13 and section 15(3) of the Danish Legal Incapacity and Guardianship Act regarding spouses shall not apply to registered partners.  
(3) Provisions of Danish law containing special rules pertaining to one of the parties to a marriage determined by the sex of that person shall not apply to registered partners.  
(4) Provisions of international treaties shall not apply to registered partnership unless the other contracting parties agree to such application.

## **Dissolution**

5. (1) Parts 3, 4 and 5 of the Danish Marriage (Formation and Dissolution) Act and Part 42 of the Danish Administration of Justice Act shall apply similarly to the dissolution of a registered partnership, cf. subsections 2 and 3 of this section
- (2) Section 46 of the Danish Marriage (Formation and Dissolution) Act shall not apply to the dissolution of a registered partnership.
- (3) Irrespective of section 448 c of the Danish Administration of Justice Act a registered partnership may always be dissolved in this country.

## **Commencement etc.**

6. This Act shall come into force on October 1, 1989,
7. This Act shall not apply to the Faroe Islands nor to Greenland but may be made applicable by Royal order to these parts of the country with such modifications as are required by the special Faroese and Greenlandic conditions.

Given at Christiansborg Castle, this seventh day of June, 1989

Under Our Royal Hand and Seal

MARGRETHE R

D/339-H-ML Act No. 373 of June 1, 1989

## **Act to Amend the Danish Marriage (Formation and Dissolution) Act, The Inheritance Act, The Penal Code and the Inheritance Tax Act.**

(Amendments resulting from the introduction of registered partnership).

WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, do make known that:-

The Danish Folketing has passed the following Act, which has received the Royal Assent

1. The Marriage (Formation and Dissolution) Act, cf. Consolidated Act No. 630 of September 15, 1986, as amended by Act No. 223 of April 22, 1987, shall be amended as follows:-

- 1 Section 9 shall be worded as follows.

“9.- A person who has previously contracted marriage or who has been a party to a registered partnership may not contract marriage as long as the previous marriage or partnership exists”

- 2 Section 10 shall be worded as follows

“10.- A person who has been married or been a party to a registered partnership may not contract marriage until division of the joint property by the court has been initiated or such property has been divided by the parties involved. This shall not apply if there was complete separation of property between the parties or an exemption from division of property is specially authorised. The Minister of Justice may in special cases grant an exemption from the provision of the first clause of this section

- 2 The Inheritance Act, cf. consolidated Act No. 584 of September 1, 1986 shall be amended as follows:

Section 17(2) shall be worded as follows

“(2) On remarriage or registration of partnership he shall be obliged to divide the joint property”

- 3 The Penal Code, cf. Consolidated Act No. 607 of September 6, 1986, as amended by Act No. 385 of June 10, 1987 shall be amended as follows

- 1 Section 208(1) shall be worded as follows:

“Any person who purports to contract a registered partnership, and who is already married or a party to a registered partnership shall be liable to imprisonment for any term not exceeding 3 years or, if the other person was at the time ignorant of the existing marriage or registered partnership, to imprisonment or any term not exceeding 6 years”

- 2 Section 208(3) shall be worded as follows:

“(3) Any person who without being married or being a party to a registered partnership contracts marriage or becomes a party to a registered partnership with a person who is already married or a party to a registered partnership shall be liable to simple detention or imprisonment for any term not exceeding one year”

3 Section 208(4) shall be worded as follows

“(4) Where the purported marriage or registered partnership is not voidable, the penalty in respect of the person who is already married or a party to a registered partnership may always be reduced to simple detention, and the person who is not married or a party to a registered partnership may be acquitted.”

4 The Inheritance Tax Act, cf. Consolidated Act No 62 of February 6, 1987, as amended by section 5 of Act No. 360 of July 1, 1988, shall be amended as follows:-

1 In section 2(1)(A) , (b) shall be repealed. (c) -(g) becomes (b)-(f)

2 In clause 2 of section 2(1)(A), “or b” shall be deleted.

3. In section 44(1) “(g)” shall be substituted for “(f)”.

5. (1) This Act shall come into force on October 1, 1989.

(2) Section 4 of this Act shall take effect in relation to the inheritance tax, which becomes liable after the day of entry into force of this Act

Given at Christianborg Castle, this seventh day of June, 1989

Under Our Royal Hand and Seal

MARGRIETHE R



## Visions of Gender Just Realities (Excerpts)



### *Forum Against Oppression of Women*

*Paper presented at workshop on "Strategies for furthering lesbian,  
gay & bisexual rights in India", Mumbai, 1997*

**A**s part of the women's movement we have always tried to work out laws, or amendments to laws as part of our campaign strategy. This is so in spite of the fact that as women we have stayed away from the legal machinery as much as possible. Law today is something that a common person shies away from using or continues to abide by out of the sheer fear and need to be away from the law and order implementing machinery. As women being marginalised, this experience is even more common.

In case of family laws the situation is worse because of the limitation of the law itself which is not based on any concepts of gender justice. To this is added the monetary cost as well as the price paid by the individual woman because of the humiliation and isolation that she undergoes. Most of the time, even if we know we are right and our demand for justice is fair, justice does not come without pain and anguish. We as women, have been divided in many categories, and such fights and struggles with people with whom we share our lives and intimacies make us more isolated. As a result the battle remains, to varying degrees, a lone battle.

In this process we are forced to take shelter and security of our near and dear ones, our kin and religious or caste communities. Some of us also take resort in the almighty for justice while some of us find that such faith is unwarranted. We cannot express this loss of faith because the security and shelter offered by the kin and communities is also outcome of that faith. It is a tightrope walk and also an unnerving experience. We undergo it as individuals and also as groups of women coming from particular communities.

The questions then that come to mind are: What kind of law will give us justice? Can there be any law in this world that can give a fair deal to women? Can there be a law that while reflecting our reality also shows the path ahead? Is it at all possible to dream beyond what exists and plan for the future where we would not only have more legal rights but also where the machinery would be more approachable? Is it possible to mitigate the trauma by at least having a better deal in terms of the law?

These are the questions that have been bothering us in Forum for the last few years. As an outcome of discussions for a long time amongst ourselves and also with others we have come to some understanding about these questions. We put forth here our vision, which is based on real life situations and also the struggles undergone by various individuals and groups of people, especially with respect to issues related with our personal lives.

This vision or thought processes is being presented as a basis for the beginning of a dialogue. It needs to be enriched and extended in its line of thinking. We put it forward hoping to initiate a dialogue amongst us on issues like personal lives and family that have been very crucial to our individual and collective struggle against patriarchy. The basis on which we are putting forward our suggestions for the contents of the laws governing the family are as follows:

The laws governing personal lives should help in defining a coherent and equitable system, in society within which intimate social interactions take place. In actuality, it is defining the accepted norms of these interactions. In this process, some social practices are given a legal sanction, while at the same time some others are deemed illegal and thus invalidated. Since social interactions are dynamic and concepts of accepted and unaccepted are continuously changing, obviously these laws have to change, have to be reformed and updated from time to time. So we put forward the basis of the laws with the clear understanding that this is what we have to say in today's reality. It will change with time.



The thumb rule guiding the reforms has to be ensuring the rights of individuals, especially those of the marginalised sections. Social interactions are not always just and neither have traditions always been beneficial to all those who adhere to them. What are considered 'normal' practices in society are not necessarily just to all people. Hence, to see that the rights of the marginalised are not infringed upon, safeguards have to be provided in the law

In this role then, the law has to provide more rights and equality than society itself. We also are very clear that formulating and implementing a law does not change social attitudes but we do believe that the existence of the law facilitates a process of social change. It is thus obvious that, not only has the law to be changed from time to time to take into account the changes in a dynamic society, but the law also has to be forward-looking and progressive.

### **Broadening the concept of the family**

As far as the laws themselves go, society's understanding of the family presumes patrilineality and patrilocality. Both these concepts need to be challenged in every possible way. We feel that the meaning of family has to be recognised in the wider sense in which it is lived.

There are many groupings of people living together outside of marriage. There are instances of consenting homosexual and heterosexual adults staying together and working out a close relationship. Such mutual contracts and partnerships need to be recognised, and the rights and social security granted to individuals in a marriage extended to these partnerships too. In our suggestions for the law we include such contracts too.

These contracts should be looked at as future directions of the norms of relationships in society. These new kinds of arrangements would help in liberating marriage as an institution that is today controlled by conservative norms of society that do not have any concept of equality within it.

According to us, although the status accorded to homosexual and heterosexual contracts has to be equal, the laws governing these cannot be the same, because we presume an inequality in all hetero-relational realities. The terms of settlements and the rights of each individual in these realities are hence different from those of persons in a homo-relational reality. Since gender is not the only factor that creates a power balance between two persons, these other differences should be taken care of when referring to rights of the individuals in a homo relational reality.

## **Marriage**

In today's context, marriage is reduced to sexual interaction for giving birth to a male child. It is a sexual contract but without other commitments, especially for a man. Man is a taker, and also looked upon as provider till the time of dispute arises. Our vision has attempted to dwell on looking at marriage differently. Is it a sacrament, or is it a relationship based on trust, faith and companionship? We wish to explore this question. We also want to look at the relationship within marriage, not as a social institution alone, but most importantly, as a space which allows one to grow, demands commitment, and provides security - particularly to women.

We are trying to formulate the law to make marriage into a contract for companionship and commitment. Procreation and transfer of property along the prescribed familial lines is not the only reason for marriage, and so its basic nature itself changes.

**We define marriage as a registered companionship contract between two consenting adults of any sex above the age of 21 years without any prohibitory degrees.** (a. the marriage contract is not only for procreation. b. We also do not want prohibitory degrees for eugenic purposes.) At the time of registration each individual should provide the following to the registering authority and the concerned partner.

1. Date of Birth Certificate
2. Declaration of non-existence of any valid marriage contract.
3. Medical Certificate giving health status especially regarding STDs and HIV.



4. Declaration of immovable and movable assets.

5. Declaration of annual income.

Any two cohabiting persons may enter this registered contract at any point.

Cohabiting partners have the same rights as married partners, as long as cohabitation can be proved for at least six months.

Two persons, whether married or cohabiting, can enter into self-defined contract, where they agree upon their respective rights and obligations within the contract and/or upon the dissolution or separation of the contract. These can be:

A. Ownership or division of the property.

B. Maintenance

C. The right to decide on the education and training of the children, but not the right to the custody of or access to their children, and

D. Any other matter in the settlement of their affairs.

Any provision in such contracts which seeks to limit the rights of a partner in respect of matrimonial home or property is void.

### **Particular conditions for Homo-relational Reality**

Since hetero-relational and homo-relational contracts are to be considered on par with each other, the partners in such contracts have similar rights. The difference is in the latter, we are considering it to be a contract between two persons from the same sex, and so there is no clear-cut power relation as in the case of a man and a woman

- i. Each partner has an equal right to the matrimonial home.
- ii. Each person has the complete right over the property that they individually own at the time that the contract is made. Both partners have an equal share and jointly own all property that is subsequently acquired.
- iii. Each partner is responsible for the well-being of the other with greater responsibility on the one who is earning to meet the material needs of the other.
- iv. Both partners are guardians of the children jointly adopted, and are responsible for their welfare.

### **Breakdown of contract**

Since marriage or cohabitation is strictly between consenting adults, we do not feel that the breakdown of such contracts requires legal proof or reasons. The two adults are in a position to determine the breakdown of the marriage. The legal machinery should help a fair settlement rather than opine and judge on the validity of the breakdown.

If any one of the partners in the marriage believes that the marriage has broken down beyond reconciliation, then it has to be accepted her/his consent to the contract does not exist. In such a situation the person should not be forced to continue with the marriage. Hence, we believe that there has to be a provision for either partner to go in for irretrievable breakdown of marriage.

Our recommendations in a situation of breakdown of marriage are as follows:

- Divorce proceedings can be initiated only after a minimum period of six months after signing of the marriage contract.
- No fault divorce has to be the norm.
- Mutual consent divorce would be available. A six-month period of separation after the filing of application for divorce (as exists today) should be there.

Irretrievable breakdown of marriage is a clause available for both the partners

- i. Either partner can ask for a divorce claiming irretrievable breakdown of the marriage. Such a divorce would get finalised six months after filing of the petition.
- ii. The property acquired during the relationship would be divided equally
- iii. Either of the partners can have a right to maintenance or residence only if destitution is proved. The right to residence is for a maximum period of one year
- iv. If the child is adopted the responsibility for providing maintenance and residence to the child is with both parents

## **Responses of women's groups (in different fora) to FAOW's draft**

There were several questions raised. One was why were we trying to institutionalise relationships into structures like marriage and family? It was felt that these institutions are oppressive and so we should not force relationships that are presently outside their purview, into them. New norms of rights and responsibilities within such relationships would emerge if we do not straitjacket them into the contract of marriage.

This was countered with various arguments. One was that anyway entering a contract was optional and only those who wanted to do so would opt for it. Secondly this was a need felt by women themselves as was evident from the instances of women actually getting married or asking for a marriage to be conducted.

Besides this, there was a need to establish a mechanism to ensure, that for any two persons in such a relationship, the rights vis-à-vis each other and the State be established and ensured. Further, if we really felt that marriage was such an oppressive institution, then why don't we actively campaign against it? Why do we not dissuade women from getting into hetero-relational marriages? Why were we raising the issue only in the context of a demand for acceptance of homo relational contracts?

Another opinion expressed was that the family laws were for hetero-relational families, and same sex relationships were not included in it. To get the rights for people in these relationships, maybe we should have a separate law. There seemed to be a divided opinion about whether we should consider both these relations on par, and hence raise the relevant issues together.

The other objection to including the issue of homo-relational realities as part of changes in family laws, was that it would “discredit” and jeopardise the broad based support for family law reforms. Then would it be strategic for us to raise the whole issue of homo-relationality?

The reply to this question was that there is never a situation when the time is right. Every time a new issue is raised there is a fear that it would not be acceptable to everybody, and so there would be a backlash to the already ongoing movements. Besides, in this case, one of the aims of this whole exercise was to initiate dialogues on various aspects of the family. Therefore, our accepting different kinds of families that exist, and asking for their recognition by society and State, is necessary.

In a way, the opinion on the issue was quite divided. While there were these objections from some people, there were others who found inclusion of homo relational realities as one of the most positive aspects of the draft. There were others who also expressed that legal recognition for these relationships would help in looking upon them as an alternative way of living.

On reflection later within the *FAOW*, there was a feeling that the discussion had to be forced. Some of us felt that by not talking about it at all, somewhere the issue of homo-relational realities was being invisibilised. We also felt that due to the fact that we were not all open for the discussions, the tone was in some sense of ‘us’ and ‘them’ which was very disturbing. We do feel in *FAOW* that we are in a position to raise the issue and we should not shy away from doing so. Some people had also expressed that they themselves could not raise these issues today but would find it easier to put it forth as a demand by some other groups with which they were in agreement. Even if this could happen, or more importantly, if we were at least able to openly dialogue and face the dilemmas and hesitation that we ourselves are facing in talking about homo-relationships, it would be a step forward



# Strategising for the Future



*Proceedings of the workshop on "Strategies for  
furthering lesbian, gay, bisexual rights in India",  
Mumbai, 7-9 November, 1997*

Positions and Perspectives 03

Discussions 03



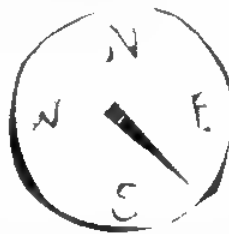
## POSITIONS, PERSPECTIVES & STRATEGIES



*Proceedings of the workshop "Strategies for furthering Lesbian, Gay and Bisexual Rights in India", 7 - 9 November, 1997, Mumbai.*

**T**his workshop was planned as a joint effort of four organisations - *Stree Sangam* (a lesbian and bisexual women's group in Mumbai), *Human Rights Law Network*, Mumbai (a group of activist lawyers), *Counsel Club*, Calcutta (a group for lesbians, bisexuals and gays), and *Forum Against Oppression of Women*, Mumbai (an autonomous women's group). The workshop was a (much delayed) follow up to a dialogue initiated in May 1996 on lesbian, gay and bisexual rights

The workshop was essentially comprised of organisational positions, and personal focussed on legal information in the first part included



lesbian, gay and bisexual rights, ways of organising, doubts, dilemmas, questions, future plans, perspectives on networking and alliances with diverse groups. In this record of the proceedings we include the perspective/ position papers presented during the first part and the essence of the discussions and debates of the workshop. The legal papers on various aspects of the rights of lesbians, gay men and bisexuals that were presented at the workshop have been included in earlier chapters in this resource book.

in two parts: the first part and individual perspectives, narratives. The second part and strategies. The discussions experiences on the issue of

## A Decade of Lesbian Hulla Gulla



*Arati Rege*

**T**ill the beginning of the eighties, no one really had heard about lesbians. There would be some stray, oblique references in conversations, writings, film -- but it was all very hazy. The lesbians must have existed and did exist then, but we did not know them as yet. We did not know ourselves. There was very little sexual awareness, no scope for exposure and exploration. The rigid heterosexual conditioning prevented women from realising their own sexual desires. Secondly, tremendous social pressures, coercion to conform to the patriarchal feminine ideal, along with total lack of options such as education, jobs, accommodation and mobility forced lesbian women into unwanted marriages.

The initial silence in the women's movement as well as other progressive and democratic movements did not help matters. Finally, the law of the land prohibits same sex relationships through Section 377 of the IPC. However, the phallocentric and penetration oriented definitions have saved women from being sentenced to ten years of rigorous imprisonment.

Nevertheless, there was sexual segregation and there was the tolerance if not approval of intimate same sex friendships including co-habitation. These factors allowed women who loved women to deal with otherwise hostile situations and lead their lives as lesbians.

For many, this was a short lived dream. There was a steady stream of news snippets about suicide pacts, about eloped couples tracked down to be forcibly separated, restored to their families, to be married off or killed (which is the same thing anyway). There were reports of a woman in a relationship undergoing sex change operations. Later, we were also to meet women who had immigrated during this period to lead their lives, to follow lovers or to find lovers. There were the brave ones right in this country who looked for ways to survive as lesbians. A couple from Gujarat who took advantage of *Matri Karar*—a quasi-legal solution worked out for wealthy married men to have relationships with women who wouldn't do "it" without a veneer of security and legality. There was the couple, Leela and Urmila, policewomen from Madhya Pradesh who tied the knot when they found a priest who believed that marriage is a union of two souls and has nothing to do with the gender of the betrothed.

The beginning of the eighties witnessed the formation of women's organisations in all major cities. These organisations were not *mahila mandals*, not women's fronts of political organisations, but independent, autonomous groups with a feminist ideology. This development perplexed, hurt and angered their former political comrades, brothers and husbands. They thought women were abandoning the earlier agenda. The women knew they were taking their own route to the same destination. These groups networked nationally.

and with international women's groups. Exchange of books and ideas brought exposure to the lesbian community abroad, their lives and their struggles. An occasional NRI lesbian visitor amid predominantly white ones made some local restless hearts flutter. Who am I? What are my desires? What are my feelings towards the woman I consider my best friend though I differ with her on the issues of Mandal and Post-modernism?

Once the veil of silence was pierced, normality certified by the American Psychologists Association, and finally (for the hard core leftist) — legalisation in Soviet Union, the Kinsey's regulation quota of 5% began to be fulfilled.

It was not all hunky dory but not all gloom and doom either. The mother organisations tacitly agreed to tacitly extend tacit support as long as the lesbians did not appear in meetings with "Dykes to Watch Out For" buttons and did not indulge in dykespeak. There was tacit opposition to "blatant" declaration of relationships, tender expression of love. Women's organisations took consistent efforts over a longish period of time to get over the "taciturn" phase.

By this time it was already 1990. The achievements were a lone ranger in Delhi—Giti Thadani—networking and researching to trace the existence of lesbians in our own country, to prove that it is not the influence of western decadence through her research of our ancient scriptures and sculptures. There were three women in Bombay braving women's meetings and gay men's parties with equal equanimity. And of course the countless, unnamed (except Leela and Urmila) women who brazened out without any support, braving all kinds and degrees of brutality.

1990 was an eventful year. The first issue of "Bombay Dost" was launched with much sympathetic media coverage. The first conference of the Asian Lesbian Network (ALN) was organised in Bangkok that was attended by seven Indian women. At the fag end of the year, the Fourth National Conference of Women's Movements was held at Calicut in which a special session titled "Single Women" was organised. It was a very meaningful event for all single women who attended it, but it holds special significance for lesbian women. It marked the end of the "tacit" era—it was the last time lesbian women took organisational refuge under the umbrella of "single women".

Bombay Dost gave a writing platform and their male readers obliged by introducing their lesbian friends and sisters to us through the magazine. There was a flood of letters—friendly, desperate, romantic, lustful. Letters from teenagers, middle aged married women, women in love, lonely women; letters coming from Ludhiana, Meerut, Gauhati, and predominantly from Hyderabad (the reason has not been discovered yet). They were all isolated in their milieu and trying to reach out to seek support. In the absence of local support organisations, the connection broke after three—four rounds of letters. The flood of letters continues, and now there is a better infrastructure to take care of it.



The Bangkok Conference of the Asian Lesbian Network (ALN) brought the Indian delegates face to face with their other Asian counterparts. It was like looking into a mirror. With a few regional variations, the situation was the same. The experience of partying with 200 other lesbians the first evening, and sharing our lives with fifty of them (the delegates) for the next 3 days, helped us feel nurtured and less isolated. It resulted in more focused activities back home, and some participation in Bombay Dost, and continued interaction with Delhi sisters (whom we met in Bangkok for the first time).

The issue of sexuality and lesbianism was placed firmly on the agenda of the women's movement in India at the Tirupati conference. By now there were younger, braver, articulate members in the lesbian community and the consistent efforts at visibility by the old guard were paying dividends. At the Sexuality Theme workshop in Tirupati, there were four sessions for 2 days attended by 150 women. There was open discussion of our bodies, sexual fantasies, masturbation, incest and abuse. When the discussion of lesbian relationships began, awe, wonder, disbelief, disgust, and open hostility were expressed. The lesbians were badgered with queries and accusations. The women who indulged in queries became sympathetic by the end of the sessions and the women who hurled accusations remained confused and unconvinced, till they were forced to apologise to us by their leaders. Their thought processes were sacrificed at the altar of overt political correctness of their leaders. Not withstanding the pig-headed hostility of hard core leftists, the issue was lanced, the silence broken and the bug of sexual diversity was planted firmly in brains that believed sex was only missionary coupling between a man and a woman.

The situation was changing rapidly, more and more women came into the group. Soon a clique of three lesbians became a crowd of thirty. Earlier we would hope to meet a new woman only in the women's group. This was a new crowd that worked in different non-conventional professions—fashion photographer, social worker, journalist, scuba diver, professor, air hostess—you name it and we have it. Women going to pubs and discos, college socials and sports meets, conferences and seminars. Many have more opportunities to meet and connect with others.

The group with its identity has begun to take shape, first a picnic with lot of fun and some intense and serious discussion. The group has a name—"Stree Sangam". Not everybody likes the name, but they like the group, hence tolerate it. There are problems that dog all organisations—like hierarchy, discipline, and accountability. In addition there are problems which dog broad based groups diverse in class, caste, education and age. Despite all this, the Stree Sangam women made a meaningful effort to come together for a retreat of 3 days last year. There was the mandatory (and always the most successful) session on sharing of experiences, session on sex (hard core), organisational perspectives and strategies, poetry reading and writing sessions, and the hulla gulla pure and simple on the beach.

I suppose this is not much of a scholastic paper worthy of being presented at such a gathering of activists, social workers and professionals. But this is a spontaneous and heartfelt out-pouring of a person who was around from the beginning of this *jharmela* here in India. So that is that!

## Women Coming Together



### *Stree Sangam*

**S**tree Sangam -a confluence, a coming together of women. Some 20 of us (lesbian and bisexual women) had come together at Gorai beach, Mumbai - a little more than two years ago. Many of us had met each other for the first time and never before as a group. In a euphoric state we had come up with 36 names for our group (many of them totally junk) and had after two weeks of decision making ended on Stree Sangam.

That two day picnic in Gorai was the first step towards the formation of a group identity. A group of lesbian and bisexual women in Bombay with a desire to connect with other women like us all over India and outside.

But this was not the beginning of lesbian women's struggle and articulation in Bombay. Some women had been networking with other women and groups and had been actively participating in campaigns, activities, etc., for many years before this - a flavour of which we got from Arati's presentation.

The network of women in Bombay had grown slowly over the years—one, two, three for a long time ... and then another ... and another ... and separately too, till in early 1995 some of us like minded women who felt very strongly about having a group of our own and wanted to put our energies into the group, found each other, got together, and organised the picnic.

What kind of group were we then or are now? New women have joined, some old friends have left - yet we largely remain an urban, middle-class, upper middle class group of well-educated, independent women. Most of us identify lesbian or bisexual to each other but few are out to their families. Many of us have never married and some of us have been or still are in marriages. Most of us earn our living and have some measure of control over our lives. We all live under various pressures. In a society where the restrictions on women are manifold, where marriage is compulsory, and avenues for achieving economic independence few, it is difficult for a woman to be self reliant. At the same time independence and autonomy or some apparent control over our lives seems to be a pre-requisite for any woman who wishes to take the bold and courageous step of coming out to even herself. In that lesbian existence itself is a political act. Ultimately what we share with each other is the fact that we all love women.

Another important parameter is the nature of a group formed around the sexual preference of a largely invisible, silent people. To learn to understand oneself and one's sexuality is a process made very difficult in the world today. Within that women's sexuality is almost non-existent and lesbian sexuality invisible. Yet sexuality is such an intricate part of our selves and our lives that when we meet another one to whom we can say "You too? I thought I was the only one," the needs, expectations and desires are immense.

Each one of us has been through this, and part of why we form groups, want to reach out to other lonely people, take this issue of rights forward, is that we know the loneliness, the silence, the hurt, the anger, the confusions, the guilt, the unspeakable joy...and want to make the roads for others less difficult and ours easier.

The same feeling does not make it easy for the group to function. Especially given the time, energy and resource constraints that all of us work within. A group like ours is not one based on a shared ideology, but a shared desire. And desire is so complex, so varied. So for us to arrive at an understanding of each other's positions on various issues has been as important as understanding the way we choose (or have to) to lead our lives. These shared tensions reflect in our work in many ways. Some of us are connected to women's groups and have felt the strong need for political action, for active campaigns and discussions on issues like personal laws, harassment. Others have wanted this group to be a more social space.

So we have survived by reconciling, not easily though, these differences. Many projects have fallen by the wayside but we have in these past two years made inroads into networking and organising the first national retreat. As a group we have spent many hours sharing our lives and experiences on coming out, sex, relationships, girlfriends, parents, friends, plans, etc. Perhaps this sharing is what only a group like this can provide. In Bombay, we are in touch with some 45 - 50 women, some more regularly than others, with women in various parts of India and with groups and women abroad. We also have collected some books and periodicals and have placed some books from our collection in *Akshara*—a women's library and resource centre to reach out to more and more women.

Besides sustaining a group and its energies the most difficult thing has been getting in touch with new women. Finally we have a P.O. Box number, which makes it easier for us to hand out the address. Still, without any significant mode of reaching to women, it has been very difficult to be able to reach the many women around the country.

There has been some openness to talk on homosexuality today but we need to tread this arena of public debate carefully as much media exposure is of the vicarious, scandalous variety. Even when the talks come to a point that "They can lead their lives as they want," it is still very repressive and even punitive when it comes closer home. The home too, though often defined as a women's space, is hardly one where lesbian sexuality can be

expressed. Some acts of such love survive, but only so far as they remain invisible and silent. Not right and not rightful. Section 377 has most often been used by women's families to harass and control their choices. Women rarely face public harassment by the police because of this section.

Further, since lesbians do not have the social option of public sexual spaces (as gay men do—however restricted—in parks, toilets, etc.); the option of organising or mobilising around these spaces, or connected issues is equally non-existent. Many groups have organised on AIDS (and within this outreach to gay men, particularly in public places). Lesbians are low priority and invisible here too.

Given the absence of control over space, language, and discourse, whether public or private, we look at the legal space with more hope. Campaigning around the law provides us a platform to raise the issue, to bring some recognition and visibility to it. Legal rights could also be that helping hand to any woman who might be strong enough to stand up for her rights with no other support structures.

Any woman who speaks openly of her desire for women, at whatever level, is more vulnerable to harassment and discrimination not only in her family but also at her workplace and in her other interactions. Decriminalisation and an anti-discrimination clause are both necessary for some measure of protection against this.

All the cases of same sex marriage in India that have been talked about in the media have been those of women. Women from all over the country, especially small towns, have wanted to get married, to formalise (solemnise) their union and have wanted to claim the legally and socially accepted institution of marriage for their love. It is these women and their brave acts that raise the issue of domestic partnerships and rights within them with urgency. We also believe that relationships and the rights of partners within relationships should be recognised. For all these reasons, and because we believe that in a democracy all should have rights, we are here today.

It is not as if either the road we have travelled to this place, or the positions we hold today are easy or simple. The first time the FAOW's suggestions on domestic partnerships were read in a Stree Sangam meeting, the reactions ranged from acceptance to disinterest to downright rejection. Part of the rejection came from a fear of recognition—what if I am known as a lesbian in my family, my friends, my workplace....

Today as a group we are, however, at a place where some whole-heartedly, and some with reservations, agree (a few disagree too) that we need a change in the legal discourse—an open recognition and acceptance of the rights of women who love women.

In our multiple struggles for lesbian rights and existence, we see the linkages with various other groups. We see ourselves as part of the women's movement and the commonality of the challenges our lives and articulations of them pose to patriarchy and its institutions. We know that so far women who love women do not have much open space within the women's movement. Yet there have been consistent efforts at creating this space. We need to work towards forging these links more strongly.

We also see that along with our specificities there is a common ground between gay groups and our struggles. We need to understand both our differences and this common ground to work as allies.

To strengthen our struggles and to realise our visions we also believe that we need to ally with all groups who believe in the basic norms of justice and equality for all.

What these alliances can be and how we can work through them towards a common understanding and action is something we hope to talk about in this meeting along with issues already mentioned.



## Perspectives On Gay And Lesbian Rights

8003

### *Human Rights Law Network*

**T**he Human Rights Law Network (HRLN) started in 1989 at an all India conference on human rights held at Bombay. Since then, it has been working on the areas of human rights and law. During this period, the Network has organised and co-organised national level conferences on communalism and law in Delhi, 1992, environment and law in Bangalore in 1994 and on gender just laws in Bombay in 1996. Its core consists of a group of about 15 lawyers and legal activists working from Bombay. One of its major activities is to fight public interest litigation on issues concerning human rights violations. It also runs the Indian Peoples' Tribunal (IPT) which has, in the last three years, done six major fact-finding reports. These include reports on Narmada oustees, the situation of tribals in Rajaji National Park, the condition of women and children in Kashmir, the slum situation in Bombay, the plight of earthquake victims in Latur, etc. It has also recently started India Centre for Human Rights and Law (ICHRL): a library and documentation centre specialising in documentation of human rights violations and training of activists in dealing with human rights violations. Besides, we also regularly come out with publications such as 'Environmental Activists Handbook', 'Handbook on Prisoners' Rights', etc.

As is obvious from our activities, we define human rights in the broadest possible sense including women's rights, rights of minorities, rights concerning environment, housing, health, prisoners, workers, etc. Individual as well as community rights need to be defended so long as they do not trample upon similar rights of other individuals inside or outside the community. Individual freedom and privacy need complete protection, and we do not recognise the State as the moral big brother. Any law that tramples on this freedom is a violation of human rights. It is in this context that we understand and respect rights of gay men and lesbians. We believe that it should be an important task of human rights organisations to help preserve these rights, and to fight against any curtailment of these rights. Each individual's sexual orientation and preference concerning companionship is entirely the choice of the individual concerned, and the State should act in a manner to give much more free space for these expressions. At the same time we should not be misunderstood as trying to justify gay, lesbian, and bisexual rights out of a principle of